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‘To Save Succeeding Generations from the Scourge of War’: Jan Christian Smuts (1870 - 1950) and the Genesis of International Organisation and Human Rights

by

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Submitted in fulfilment of the requirements for the degree

DOCTOR LEGUM

In the Institute of International
and Comparative Law in Africa,
At the Faculty of Law,
University of Pretoria

September 2015

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For Yolandi

As Jan said to Isie:

Hand in hand and
Soul in soul
We shall go through life,
And no noise of the outside world
Shall penetrate into our
Little sovereign kingdom of the soul
. . . I love you as my own Soul . . .

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ACKNOWLEDGMENTS

It is said that a doctoral dissertation is a lonely journey. But it certainly is not a solitary one. I could not have reached the destination without the following people, to whom I owe an unfathomable debt of gratitude:

(i) To my supervisor and mentor, Professor Christof Heyns, for his superlative leadership, and the exemplary speed and thoroughness with which he reviewed drafts that were considerably longer than even this final product. Professor Heyns has taught me how to bring both academic rigour and creativity to bear on academic research - a lesson for which I am eternally grateful as I embark on my academic career. I am also deeply indebted to Professor Heyns for facilitating the financial support that enabled me to conduct extensive research at the League of Nations Archive in Geneva, and at the United Nations Archive in New York. It was a most enriching experience.

(ii) To my Head of Department, Professor Rian Cloete, to whom I owe, quite literally, my academic career. I cannot possibly adequately express my gratitude for all he has done to make my return to legal academia possible, as well as for his constant encouragement during the completion of this dissertation.

(iii) To friends and family, in particular my father, Willie Gravett, who may not always have agreed with my choices, but who has always remained steadfast in his support throughout my life.

(iv) To the love of my life, Yolandi, who has had to endure this 'third person' in our marriage from the beginning. Without her love, patience, and humour, nothing - let alone this dissertation - would have been possible.

(v) To Charlotte, whose expected arrival was the best positive motivation that I could have asked for to complete this dissertation. She inspires me every day.

In the course of the last three years, I have taken courage in Smuts' *mantra* during those dark days of the Paris Peace Conference: 'Let us do our duty, and leave the rest to God.' Indeed, His Grace has carried me through.

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TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION……1

1. The Janus face of international law, politics, and organisation……..3

1.1 Self-determination, mandates, and racial equality at the Paris Peace Conference……4

1.2 The human rights idiom during the Second World War - The Atlantic Charter, the Declaration of the United Nations, and the Dumbarton Oaks Proposals……9

1.3 Great power hegemony……21

1.4 National sovereignty……..28

2. Moral compartmentalisation……33

3. The Janus face of Smuts……..39

4. A brief personal history of Smuts……..46

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PART I JAN CHRISTIAN SMUTS AND THE FOUNDING OF THE LEAGUE OF NATIONS

CHAPTER 2
'HANDYMAN' AND 'ORATOR' OF THE EMPIRE……57

1. A brief history of international organisation……57

1.1 Ideas regarding international organisation and peace prior to the 19th century……58

1.2 International organisation from 1814 to 1914: The Concert of Europe……63

2. 'Handyman of the Empire': Smuts as a member of the British War Cabinet 1917 - 1918……68

3 'Orator of the Empire': Smuts' reflections on the League of Nations idea during the war ……74

3.1 'The necessity of devising means to diminish the risk of future wars'……74

3.2 'A real Magna Carta for the whole of humanity hereafter'……..76

3.3 'The real nucleus of the world government of the future'……86

3.4 'The greatest creative effort of the human race in the sphere of political government'……94

3.5 'We must from the very start of the conference co-operate with America as far as is consistent with our own interests'…….100

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CHAPTER 3

'THE LEAGUE OF NATIONS: A PRACTICAL SUGGESTION'……105

1. 'A short sketch, hastily written at the last moment, and amid other pressing duties'……..105

2. 'An ever visible, living, working organ of the polity of civilization'……107

2.1 Idealism and pragmatism……..108

2.2 An anti-legalist, organicist league based upon a moral paradigm……120

3 Reaction to Smuts' pamphlet……128

3.1 Views of scholars……128

3.2 Reaction of British politicians……..133

3.3 Influence on Wilson……141

4 Intellectual communion between Smuts and Wilson……155

4.1 Organicist, evolutionary theory of international politics……..158

4.2 Anti-legalist theory of international politics……160

4.3 Global public opinion in international politics……165

4.4 A moral paradigm of international politics……..166

4.5 The tension between international interests and state sovereignty……..168

5 A *realpolitik* calculation……169

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CHAPTER 4

SMUTS AT PARIS:

'IT HAS EVER BEEN THUS WITH THE PROPHETS . . .'……175

1. 'Work, and despair not'……175

2 Smuts on the Commission on the League of Nations……182

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CHAPTER 5

MANDATES AND REPARATIONS……..199

1. The mandate for South West Africa: '[I]f the interpretation were to come in practice from General Smuts'……..198

1.1 The confrontation between Wilson and the Dominions……198

1.2 Smuts' compromise solution……208

1.3 The mandate system: Veiled annexation or step along the evolutionary path of international organisation and human rights?……216

2 Reparations: 'Logic? I don't give a damn for logic . . . I am going to include pensions'……221

2.1 Introduction……221

2.2 A brief background to the controversy……225

2.3 Smuts' 'legal' opinion of 31 March 1919……..236

2.4 Evaluation: 'A bad means' of achieving 'distributive justice'……..242

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CHAPTER 6

SMUTS' STRUGGLE FOR REVISION OF THE TREATY OF VERSAILLES: 'I FIND MYSELF IN A WORLD WHERE DESPAIR SEEMS ALREADY TO HAVE SETTLED ON MEN'S SOULS'……253

I FROM HOPE TO APPREHENSION……..253

1. 'A bad spirit about'…….253

2 'An impossible peace, conceived on a wrong basis'……254

3. 'The terms of peace . . . will leave a trail of anarchy, ruin, and bitterness'……..262

4. 'This is the time for the Griqua prayer'…….268

5. 'Under this Treaty Europe will know no peace'……..278

6. 'The final sanction of this great instrument must be the approval of mankind'…….288

II FROM 'FURIOUS REVOLT' TO RESIGNATION……294

1. '[A] Wilson Peace' or 'a scrap of paper'……..294

2. 'The war was only the vanguard of calamity'……297

3. 'This Treaty breathes a poisonous spirit of revenge'…….309

4. To sign or not to sign……..317

5. 'Not in criticism but in faith'……..335

6. 'The word reconciliation has to be writ large on our skies'…….342

7. Conclusion……348

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PART II JAN CHRISTIAN SMUTS AND THE FOUNDING OF THE UNITED NATIONS

CHAPTER 7

THE UNITED NATIONS: PRODUCT OF EVOLUTION OR REVOLUTION?.....361

1. Introduction.....361

2. The United Nations as a United States institution.....367

2.1 Introduction.....367

2.2 The overwhelming influence of the United States on the United Nations.....368

3. Smuts and Churchill.....376

4. The veto.....384

5. 'Peace unbacked by power remains a dream'.....388

6. Smuts at San Francisco.....397

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CHAPTER 8

THE PREAMBLE TO THE CHARTER OF THE UNITED NATIONS……..408

1. Introduction……408

2. The Meeting of Commonwealth Prime Ministers in London (4 to 13 April 1945)……411

3. The San Francisco Conference……418

4. The name of the new post-war international organisation……439

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CHAPTER 9

SMUTS AND THE 1946 UNITED NATIONS GENERAL ASSEMBLY……441

1. Introduction……..441

2. The incorporation of South West Africa into the Union of South Africa……450

3. The quarrel with India……455

3.1 The arguments……455

3.2 The implications……478

3.2.1 Implications for the United Nations……..478

3.2.2 Implications for the human rights movement……479

3.2.3 Implications for South Africa……480

3.2.4 Implications for Smuts……481

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CHAPTER 10

THE SMUTSIAN CONCEPT OF 'HUMAN RIGHTS'……486

1. The human rights idiom during the early 1940s……..486

1.1. Roosevelt's 'Four Freedoms' speech (6 January 1941)…….490

1.2 The Atlantic Charter (14 August 1941)……494

1.3 The Declaration of the United Nations (1 January 1942)……..496

1.4 *The rights of man* campaign of HG Wells and Hersch Lauterpacht's *An bill of rights of man*……499

1.5 The *Proposals for the establishment of a general international organization* ('Dumbarton Oaks Proposals') (9 October 1944)……505

1.6 The human rights idea during the Second World War: An 'empty vessel'?……509

2 Holism and human rights……515

2.1 A brief exposition of Smuts' 'Idea of the Whole'……515

2.2 The role of Holism in Smuts' statecraft……523

2.3 'Freedom' and 'Personality'……528

2.3.1 Freedom……529

2.3.2 Personality……..530

3. What rights are 'human rights'?……534

4. Human rights as an ideological response to war……538

4.1 'A war of the spirit, of man's soul'……538

4.2 Human rights as a reaction to Nazi atrocities……..542

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CHAPTER 11

SMUTS IN CONTEXT:
A CORRECTIVE TO MAZOWER AND MOREFIELD

1. Introduction……551

2. 'The visionary, globe-trotting statesman-philosopher, committed to his evolutionist paradigm of cosmic harmony under beneficent white guidance'……551

2.1 Introduction……551

2.2 Smuts and race……554

2.2.1. The peril of labels……555

2.2.2. 'The general who spent his weekends with Quakers'……556

2.2.3 Politics as the art of the possible……560

2.2.4 The 'sphinx problem'……564

2.2.5 Smuts, the upholder of Western civilisation……565

2.2.6 'Cosmological time'……572

2.2.7 Hofmeyr as Smuts' successor……574

2.2.8 Smuts, the 'father of apartheid'?……578

2.2.10 Social policy away from politics……584

3. Conclusion……587

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CHAPTER 12

CONCLUSION……588

1. Mazower's central question……588

2. The significance of Smuts' introduction of the phrase 'human rights' into the Charter of the United Nations……590

2.1 The unintended consequences of grandiose phrases……591

2.2 The transformative effect of ideas……595

2.3 The gravitational effect……598

2.4 The perils of perfectionism……600

3. The expanding circle……605

4. Smuts' paramount contribution……608

BIBLIOGRAPHY……610

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CHAPTER 1

INTRODUCTION

The United Nations today occupies a political space at the centre of the global dialogue.[1] To most of the world, the United Nations symbolises much of the hope for international peace and security through global cooperation, dialogue, collective responses to security threats, and, perhaps predominantly, through human rights.[2]

However, as Mark Mazower illustrates in *No enchanted palace* (2009),[3] the origins of human rights standards are not as pristine and pure as humankind generally would like to believe.

This thesis investigates the duality of international law and international relations, refracted through the prism of the duality of Jan Christian Smuts, particularly as this duality manifested in his contribution to international law and organisation. It seeks, in essence, to provide an answer to the questions posed by Mazower:[4]

> What to make of the fact that Jan Smuts, South African statesman, helped draft the UN's stirring preamble? How could the new world body's commitment to human rights owe more than a little to the participation of a man whose segregationist policies back home paved the way for the apartheid state?

A predominant characteristic of international law and international relations is their Janus face: states profess their adherence to lofty ideals for humanity alongside the pursuit of their own immediate self-interest. This phenomenon in the behaviour of states

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[1] J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 37.

[2] The flag of the United Nations, as it flies over United Nations offices and peacekeeping missions around the world, is a constant reminder of this aspiration. As Krasnow states: 'The flag's blue field holds a lonely planet earth embraced by olive branches. This cloth was woven from the last remaining threads of hope which had survived to devastating world wars.' *Ibid* 3. See also ED Weitz 'From the Vienna to the Paris system: International politics and the Entangled histories of human rights, forced deportations, and civilizing missions' (2008) 113 *American Historical Review* 1313.

[3] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009).

[4] *Ibid* 5.

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has been referred to as the distance between vision and reality,[5] and the gap between rhetoric and reality.[6]

As Franklin D Roosevelt explained exasperatingly to a disappointed internationalist associate in 1932 why he (Roosevelt) could no longer support United States participation in the Permanent Court of International Justice or the League of Nations:[7]

> Can't you see that loyalty to the ideals of Woodrow Wilson is just as strong in my heart than in yours - but have you ever stopped to consider that there is a difference between ideals and the methods of obtaining them?

Similarly, EH Carr wrote:[8]

> The ideal, once it is embodied in an institution, ceases to be an ideal and becomes the expression of a selfish interest, which must be destroyed in the name of a new ideal. This constant interaction of irreconcilable forces is the stuff of politics. Every political situation contains mutually incompatible elements of utopia and reality, of morality and power.

The same fundamental duality occurs in the process of the emergence of human rights standards and constitutions.

With reference to the United States, Michael Kammen draws attention to the 'disparity between rhetorical devotion to our vaunted liberties' and the reality of policies that undermine those liberties.[9] The authors of the American Declaration of Independence apparently saw little contradiction between the institution and practices of slavery, and the 'self-evident' truth that all men were created equal.[10] Indeed, America's genuine and long-standing attachment to equality has always sat uneasily with its equally long-standing legally enshrined inequality in matters of race and sex.[11]

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[5] PG Lauren *The evolution of international human rights: Visions seen* (2003) 31.

[6] E Borgwardt '"When you state a moral principle, you are stuck with it': The 1941 Atlantic Charter as a human rights instrument' (2005-2006) 46 *Virginia Journal of International Law* 545.

[7] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 68

[8] EH Carr *The twenty years' crisis: 1919 - 1939*, as quoted in *Ibid* 141.

[9] As quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 545.

[10] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 53.

[11] B Markesinis *The duality of genius: Shades, blemishes and vices in the lives of great achievers* (2008) 264.

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With regard to racial equality, the Fourteenth Amendment to the United States Constitution has since 1868 ensured the 'equal protection of the laws,' but it took at least a further 100 years before the proclaimed ideal *began* to be approximated through the dismantling of legally sanctioned racial discrimination.[12] Of course, this phenomenon is by no means confined to history. Today the United States is often criticised for the inconsistency between its practices abroad (such as its targeted killing programme executed largely through armed drone strikes outside the context of armed conflicts) and its domestic emphasis on human rights.

During the Second World War, policymakers of the most prominent founding member states of the United Nations fashioned improved international structures to serve the global community, as well as serving their own best interests.[13] They simultaneously embraced the path of human rights in the Charter of the United Nations and the Universal Declaration of Human Rights, *and* remained committed to their worldwide colonial empires (Europe), continued to practice racial discrimination domestically (United States), and continued unabated the large-scale purges and the abuses of the gulags (Stalinism in the Soviet Union).

Similarly, the European Convention on Human Rights was adopted while the colonial empires of the member states of the Council of Europe were prospering. In time, of course, the acceptance of the ideals expressed in the Convention would render such practices untenable.[14]

1. The Janus face of international law, politics, and organisation

The instances of the Janus face of international law, politics, and organisation are legion. For the sake of expediency, this thesis is limited to examples of this phenomenon during the period of Smuts' activity on the international stage, *i.e.*, from approximately the *fin de siècle* to 1948. This thesis also emphasises the expression of the Janus face in the context of a number of highly contentious international issues of that era, namely self-determination; racial equality; great power hegemony; national sovereignty; and especially the 'human rights' idiom during and shortly after the Second World War.

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[12] L Henkin, 'The universality of the concept of human rights' (1989) 506 *Annals of the American Academy of Political and Social Science* 12.

[13] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) xiii.

[14] C Heyns, 'African human rights law and the European Convention' (1995) 11 *South African Journal on Human Rights Law* 254.

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Human rights policy is particularly susceptible to duality. Although 'human rights' is often invoked in the sphere of abstract morality, it also exists, as any other policy, in the realm of politics, and is subject to the same rules.[15] Kirsten Sellars explains this duality as follows:[16]

> Governments . . . publicly condemn the repressive acts of others. But when it suits them, they will ignore, excuse, or even perpetrate, exactly the same behaviour . . . In politics, pragmatism rules . . . To misquote JFK, governments will not ask what they can do for human rights, but what human rights can do for them.

The evolution of human rights is to a large extent 'a political tale of idealism and pragmatism, in which appearances are deceptive and issues are rarely black-and-white.'[17]

In the same vain, Kenneth Cmiel asks: 'How could the rhetoric of human rights be so globally pervasive while the politics of human rights is so utterly weak?'[18] The answer, at least partly, lies in the fact that, even today, the gap between values espoused, and rights implemented and enforced, remains large in every country.[19]

The absence of political will to establish adequate mechanisms for implementing human rights remains a serious issue, and contrasts sharply with the more powerful legal tools that exist to enforce, for example, international economic law.[20] In the area of human rights specifically, rhetoric has far outrun mechanisms for implementation.[21] As set forth below, this arrangement was by design, not chance. At the outset of the modern human rights project, Washington, Moscow, and London wished to avoid an activist human rights system, although they all wanted to proclaim that they had one.

1.1 Self-determination, mandates, and racial equality at the Paris Peace Conference

In his Fourteen Points, Wilson vowed to uphold liberty and the right of people to select their own form of government. 'Self-determination,' the president declared, 'is not a mere

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[15] K Sellars *The rise and rise of human rights* (2002) xiv.

[16] *Ibid*.

[17] *Ibid* inside back cover; xiv.

[18] K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 118.

[19] R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 52.

[20] *Ibid*.

[21] *Ibid*.

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phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.'[22] However, argues Brian Simpson, there was 'radical hypocrisy in the peace settlement.'[23] The victorious powers had not the least intention of applying the principle of 'self-determination' to themselves. After all, France, Great Britain, and the United States all had either colonial problems or domestic minority problems to contend with.[24]

Article 22 of the Covenant of the League of Nations established a system for governing the former dependencies of the defeated powers. These territories were not annexed outright as the spoils of war, but placed under a form of trusteeship - the mandates system - administered by the victorious powers under supervision of the League's Permanent Mandates Commission ('PMC').[25]

However, the 'trusteeship concept' was accepted in principle, but not wholly in either substance or spirit.[26] Strong pressure from Australia and the Union of South Africa resulted in the creation of the class 'C' mandates. These were virtually indistinguishable from *ante bellum* colonies, in that the mandatory powers were permitted to administer them as part of their metropolitan territory.[27] This thesis discusses Smuts' role as the principal progenitor of the mandates system in Chapter 5 below.

The imperial powers resented the PMC as an 'unfriendly intruder' and an 'unwelcome critic.'[28] They refused to allow any significant advancement towards independent political parties or self-government in the mandates, let alone self-

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[22] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 90; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 122;

[23] *Ibid* 124.

[24] *Ibid*.

[25] The Covenant expressed a paternalistic philosophy. The well-being and development of the inhabitants of the mandated territories - 'peoples not yet able to stand by themselves under the strenuous conditions of the modern world' - constituted, in the words of the Covenant, a 'sacred trust of civilization' In Simpson's view, the concept of trusteeship buttressed, at least in part, the justifying theory of Great Britain as a colonial power, and was a 'smarted up version of the notion of the white man's burden.' *Ibid* 146. See generally A Anghie *Imperialism, sovereignty and the making of international law* (2005) 115 *et seq.*

[26] KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 168.

[27] *Ibid*.

[28] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 125.

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determination.[29] It is noteworthy that none of the mandates gained sovereign independence during the inter-war period.[30]

Moreover, the ineffectiveness of the perceived 'overlordship' of the PMC was well illustrated by Australia's refusal to pay heed to the remonstrations of the PMC regarding the 'whites only' immigration policy in Australia's New Guinea mandate, and the refusal of Japan to comply with the open door and no-fortification provisions of Article 22 of the Covenant in its administration of the former German Pacific islands.[31]

Members of the PMC were also not permitted to visit the territories under supervision to determine first-hand how the terms of the mandates were being administered.[32] Nor could the inhabitants of the territories present petitions to the PMC in person; they were spoken for by the mandatory government.[33]

The Janus face of the Paris Peace Conference was exemplified by the events surrounding Japan's failed attempt to include an article on 'racial equality' in the Covenant of the League of Nations.[34] Among the victors emerging after the carnage of the First World War was Japan, the first ever non-European country to be invited to such a

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[29] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 64.

[30] *Ibid*.

[31] KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 169. It seemingly was not always appreciated that the mandates system was a system of *national administration under international supervision*. The international supervision took the form of the PMC examining written and oral reports submitted by the mandatory powers once per year. The Commission would then report, with observations, to the Council of the League which might, or might not, act upon the Commission's recommendations. *Ibid*.

[32] *Ibid* 169 - 170.

[33] A Anghie *Imperialism, sovereignty and the making of international law* (2005) 175; KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 170.

[34] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 51. For a detailed exposition of the Japanese proposal on racial equality, see PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 80 and further; M MacMillan *Paris 1919: Six months that changed the world* (2001) 307 - 321. See generally also L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 76 - 77; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 61; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 44 - 45.

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portentous gathering.[35] The country was resolved to speak out as a victim of racial prejudice, and to be pertinacious about the international recognition of the right to racial equality.[36] 'If the discrimination wall is to remain standing,' insisted the Japanese newspaper *Asahi*, 'then President Wilson will have spoken of peace, justice, and humanity in vain, and he would have proved after all only a hypocrite.'[37]

Especially considering Japan's emerging military and economic parity with European states, the Japanese expected that their proposal for a racial equality clause could not be rejected.[38] The Japanese delegation proposed, as an addition to a clause on religious freedom included in the draft Covenant at Wilson's insistence,[39] the following provision:[40]

> The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of State members of the League equal and just treatment in every respect, making no distinction, either in law or in fact, on account of their race or nationality.

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[35] PG Lauren *The evolution of international human rights: Visions seen* (2003) 98. Japan attached great significance to the Paris Peace Conference, and dispatched to Paris an experienced delegation familiar with European diplomatic traditions. The leader of the Japanese delegation, Prince Saionji was a distinguished member of the royal family who had been educated partly in France.' R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 51. Japanese presence at Paris was invested with great symbolic significance. It was the one non-European, non-Christian country to be accepted as a major power, and consolidating this recognition was a preeminent goal of Japanese diplomacy. M Mazower *Governing the world: The history of an idea* (2012) 163.

[36] In addition to race-based immigration quotas to ward off the 'Yellow peril' in Australia, New Zealand, the United States, and Canada, the Japanese continued to be subjected to racist laws and treatment when visiting Europe and the United States. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 47.

[37] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 99. Wilson's many inspiring speeches had created resplendid images of a future world. In one war-time message, Wilson proclaimed: 'Only a peace between equals can last. Only a peace the very principle of which is equality and a common participation in a common benefit. The right state of mind, the right feeling between nations, is as necessary for lasting peace as is the just settlement of vexed questions of territory or of racial and national allegiance. The equality of nations upon which peace must be founded, if it is to last, must be an equality of rights.' As quoted in *Ibid* (1988) 81.

[38] Japan, as an ally without whom Great Britain could not have won the First World War, expected to be admitted to the League on equal footing. WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 213; PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 83.

[39] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 44; RJ Vincent 'Racial equality' in H Bull & A Watson (eds) *The expansion of international society* (1984) 240.

[40] M MacMillan *Paris 1919: Six months that changed the world* (2001) 317 - 318.

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The Japanese proposal met with 'quick and intransigent' opposition.[41] The domestic policies of the Great Powers - notably the treatment of African-Americans in the United States, and the 'White Australia' policy - militated against its acceptance.[42]

The Japanese delegation significantly attenuated their proposal. The revised clause simply sought to affirm 'the principle of equality of nations and just treatment of their nationals.'[43] However, faced with unabated resistance from presumed friends and allies abroad,[44] and pressure from home, the Japanese delegation decided to appeal to the League of Nations Commission as a whole.[45] Despite strenuous objections by the United States and British Empire delegations,[46] the final tabulation nevertheless reflected a clear majority in favour of including in the Covenant a provision on racial equality.[47] However, Wilson, in the chair, declared that the proposal did not pass for failing to secure unanimous approval.

Wilson's actions were manifestly *ultra vires.* The French legal expert, Larnaude, brought to the attention of the uproarious assembly that no such 'unanimity rule' existed, and that the majority had voted in support of the principle of racial equality. Although Wilson was forced to admit this, he nevertheless insisted that there simply were 'too serious objections on the part of some of us' to have such a provision in the Covenant. With that he refused to acknowledge any further challenges and declared the debate closed.[48]

Many newspapers and radio broadcasts trumpeted the rejection of the Japanese proposal as a betrayal of Wilson's high-minded declarations, and a cynical denunciation of

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[41] PG Lauren *The evolution of international human rights: Visions seen* (2003) 99.

[42] RJ Vincent 'Racial equality' in H Bull & A Watson (eds) *The expansion of international society* (1984) 240.

[43] M MacMillan *Paris 1919: Six months that changed the world* (2001) 320.

[44] Sharp comments that it proved impossible to discover a form of words which would satisfy the Japanese, and yet not alarm the Australians, New Zealanders, British Columbians, and Californians, who feared unlimited Japanese immigration. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 61.

[45] PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 85.

[46] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 382. MacMillan notes that Borden and Smuts 'went back and forth between Hughes and the Japanese delegation' to attempt to broker a compromise. M MacMillan *Paris 1919: Six months that changed the world* (2001) 319. There is however, as far as I could find, no record in Smuts' writings regarding his involvement in this issue.

[47] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 52.

[48] PG Lauren *The evolution of international human rights: Visions seen* (2003) 100; R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 52. See also AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 124.

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the supposed principles for which the war had been fought.[49] Cities in Asia, Africa, and even the United States, saw violent protests in the streets.[50] Wilson was condemned as a 'hypocrite,' and 'his public image as a visionary peacemaker suffered a heavy blow.'[51]

Margaret MacMillan believes that the failure to secure a 'racial equality' clause was an important factor during the inter-war years in turning Japan away from cooperation with the West and towards more aggressive nationalistic policies.[52] When totalitarian regimes came to power in Europe, they often justified their aggressive policies by pointing to the blatant hypocrisy and double standards inherent in the liberal internationalist ideology of the democratic European powers.[53]

1.2 The human rights idiom during the Second World War - The Atlantic Charter, the Declaration of the United Nations, and the Dumbarton Oaks Proposals

In the early stages of the Second World War, it became increasingly clear to Roosevelt that, although technically his country was still a non-belligerent, he had to formulate with Churchill a joint strategy to respond to growing pressure in their respective countries to declare a common purpose.[54]

Towards this end, on 9 August 1941, Roosevelt and Churchill met for three and a half days under conditions of strictest secrecy and under heavy naval protection at Placentia Bay, off the coast of Newfoundland.[55] The document that resulted from this series of

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[49] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 45; R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 52. The Japanese newspapers, *Asahi* and *Nichinichi*, lashed out against the 'paralyzed conscience' and hypocrisy of the 'so-called civilized world' of the Anglo Saxons. As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 100. WEB Du Bois denounced Wilson as blatantly violating the principles for which the war had been fought and turning his back on promises made to black soldiers. *Ibid*.

[50] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 52.

[51] *Ibid*.

[52] M MacMillan *Paris 1919: Six months that changed the world* (2001) 321.

[53] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 66. Lauren states: 'Of course, Axis propaganda . . . trumpeted Allied hypocrisy. PG Lauren *The evolution of international human rights: Visions seen* (2003) 145.

[54] PG Lauren *The evolution of international human rights: Visions seen* (2003) 137.

[55] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 502; PG Lauren *The evolution of international human rights: Visions seen* (2003) 137. A series of meetings took place on the battleship *Prince of Wales* and the cruiser *Augusta* between Churchill, Roosevelt and members of their staffs. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 177.

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meetings was issued *via* telegram to the world on 14 August 1941, and became known as the 'Atlantic Charter.'[56]

Eight points came to be articulated in the Charter. In the name of 'their hopes for a better future for the world,' the Anglo-American leaders publicly announced that they sought no territorial aggrandisement[57] for themselves; supported freedom of trade and of the seas; and respected 'the right of all peoples to choose the form of government under which they will live.'[58] In addition, they aspired to ensure 'improved labor standards, economic advancement, and social security' in all nations; desired people everywhere to be able to have the right to 'live out their lives in freedom from want and fear;' and sought to establish a 'wider and permanent system of general security' for the world.[59]

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[56] The Foreign Office termed it The Anglo-American eight point declaration. This uninspiring title was soon replaced by the more fetching Atlantic Charter, coined by a journalist of the Daily Herald, which gained swift popularity, but also somewhat misleadingly suggested that the document was a form of treaty. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 179. See also E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 502; E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 4. See also generally M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 385; JP Humphrey 'The UN Charter and the Universal Declaration of Human Rights' in E Luard (ed) *The international protection of human rights* (1967) 39; WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 132 - 133; E Luard *A history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 17; K Månsson 'Reviving the 'Spirit of San Francisco': The lost proposals on human rights, justice, and international law to the UN Charter' (2007) 76 *Nordic Journal of International Law* 220; CE Burckel (ed) *Who's who in the United Nations: The authoritative, illustrated, biographical key of persons associated with the United Nations* (1951) Appendix A; B Broms *The United Nations* (1990) 37.

[57] Borgwardt notes that the Atlantic Charter enshrined the Wilsonian ideals of seeking 'no aggrandisement, territorial and other,' and that of self-determination, expressed as 'no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.' In true Wilsonian fashion, another provision called for the strengthening of world security by means of 'an effective international organization.' As quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 520. One of Roosevelt's speechwriters described the president as 'haunted by the ghost of Woodrow Wilson' during the Atlantic Conference. *Ibid* 516.

[58] 'Joint Declaration of the President of the United States and the Prime Minster of Great Britain (Atlantic Charter) 14 August 1941' *US Department of State Bulletin* (16 August 1941) 125 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 1; PG Lauren *The evolution of international human rights: Visions seen* (2003) 138. Recognising Churchill's stubbornness over the issue of Indian independence, at the Atlantic Conference Roosevelt proposed a 'purposefully vague statement supporting self-determination.' Churchill, eager to avoid confrontation lest it interfered with his pleas for American aid, attempted to exclude the Empire with the condition that the phrase only applied to previously self-governing nations conquered by Germany. But then, seemingly realising that he had defanged the commitment, Churchill agreed to include the phrase in their joint statement of broad war aims. WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 132 - 133. Kimball believes that Roosevelt had outmanoeuvred Churchill in a classic exercise of public diplomacy. Pro-independence nationalists read the Charter as an unequivocal commitment to independence, as Roosevelt intended. *Ibid* 132.

[59] 'Joint Declaration of the President of the United States and the Prime Minster of Great Britain (Atlantic Charter) 14 August 1941' *US Department of State Bulletin* (16 August 1941) 125 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 1; See also PG Lauren *The evolution of international human rights: Visions seen* (2003) 138 - 139.

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With the United States once again taking the lead, the Declaration of the United Nations resulted from the second Churchill-Roosevelt summit, held four months after the Atlantic Conference in December 1941 and January 1942.[60] This was a joint declaration, signed on 1 January 1942, by 26 nations in the anti-Axis coalition, in which they subscribed to the purposes and principles of the Atlantic Charter, and committed their full resources, military and economic, to winning the war against the Axis Powers. Each government also pledged itself to cooperate with the other signatory governments, and not to enter into a separate peace. Twenty six additional countries subsequently adhered to the Declaration.[61]

It was in the preamble to this Declaration that 'human rights' *eo nomine* first appeared:[62]

> Being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world.

Lest there be any misunderstanding of the crusade at hand, Roosevelt declared that this was nothing short of a global struggle against 'tyranny and cruelty and serfdom' in which there could never be a compromise 'between good and evil,' and where 'only total victory'

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[60] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 543. See also WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 133.

[61] 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 2. See also generally M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 385; JP Humphrey 'The UN Charter and the Universal Declaration of Human Rights' in E Luard (ed) *The international protection of human rights* (1967) 40; E Luard *A history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 17; K Månsson 'Reviving the 'Spirit of San Francisco': The lost proposals on human rights, justice, and international law to the UN Charter' (2007) 76 *Nordic Journal of International Law* 220; CE Burckel (ed) *Who's who in the United Nations: The authoritative, illustrated, biographical key of persons associated with the United Nations* (1951) Appendix A; B Broms *The United Nations* (1990) 37; WF Kimball The juggler: Franklin Roosevelt as wartime statesman (1991) 133.

[62] 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 2 (Author's emphasis). See also CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 333; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 183; R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 54; JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 448.

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could bring about the realisation of human rights.[63] The text expressed the conception that savagery and lack of respect for human rights are inextricably linked. This led to general acceptance that the notions of 'human rights' and 'civilisation' go hand-in-hand.[64]

The 'high-toned abstractions'[65] of the Atlantic Charter and the Declaration of the United Nations were intended to differentiate the principles of the Anglo-American powers from those of the Third Reich and Imperial Japan. Yet, they also exposed the 'dizzying gaps' between rhetoric and reality.[66] Paul Gordon Lauren states:[67]

> The claim by the Allies that they were engaged in a universal crusade for human rights while at the same time fully violating some of those very rights in their own particular policies, often rang hollow and revealed a wide and glaring chasm between words and deeds.

On the one hand, the United States and the United Kingdom were responsible for introducing 'human rights' into the international discourse, if primarily as a propaganda weapon.[68] On the other hand, neither power exhibited any willingness to alter its own policies in any way.

The United Kingdom intended the post-war international organisation to be perfectly compatible with empire.[69] In fact, Churchill explicitly stated in Parliament that the reference to 'self-determination' in the Atlantic Charter did not apply to India or Burma, or for that matter to any other territory within the British Empire, but only to European nations under Nazi occupation.[70]

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[63] 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 2. See also PG Lauren *The evolution of international human rights: Visions seen* (2003) 140.

[64] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 183.

[65] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 508 - 509.

[66] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 35; E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 509. For both Great Britain and the United States, the 'contradictions between principled rhetoric and practical policies were quite stark.' R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 93.

[67] PG Lauren *The evolution of international human rights: Visions seen* (2003) 145.

[68] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 93.

[69] S Moyn *The last utopia: Human rights in history* (2010) 44.

[70] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 94.

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On the issue of maintaining control over their colonies after the war, France agreed with its ally across the Channel, whatever differences of style, policy, and personality existed between De Gaulle and Churchill.[71] In the United States, African-American citizens continued to live under discriminatory segregationist laws in the South.[72] Moreover, both government propaganda and the popular media were quick to designate the war in the Pacific as 'the Yellow Race against the White Race.'[73]

In reaction to the Declaration of the United States, Gandhi wrote to Roosevelt on 1 July 1942:[74]

> I venture to think that the Allied Declaration that the Allies are fighting to make the world safe for freedom of the individual and for democracy sounds hollow, so long as India, and for that matter, Africa are exploited by Great Britain, and America has the Negro problem in her own home.

Barely a month after signing the Declaration of the United Nations, Roosevelt, in February of 1942, signed Executive Order 9066, which authorised the removal, and then detention, of United States citizens of Japanese origin and their parents.[75]

As early as the Atlantic Conference in August of 1941, as well as other war-time negotiations, Great Britain and the United States crossed swords over United States

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[71] WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 129.

[72] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 94.

[73] *I bid*.

[74] As quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 545.

[75] PG Lauren *The evolution of international human rights: Visions seen* (2003) 144 - 145. In the absence of any formal legal charges, more than 100 000 Japanese-Americans, accused of belonging to an 'enemy race,' found themselves forced from their jobs and homes, and then herded into what government documents of the time described as 'concentration camps,' engirded by barbed wire, guard dogs, and armed guards. *Ibid* 145. Roosevelt's Executive Order was upheld by the United States Supreme Court in *Korematsu v United States*. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 94. The complete case reference is *Korematsu v United States*, 232 US 214 (1944). Likewise, governments throughout the Western Hemisphere, viewed any person - man, woman, or child - of Japanese decent as a potential enemy based solely upon the criterion of race. In Mexico, Peru, and Canada, thousands of Japanese immigrants were evicted from their homes, rounded up, and interned in special camps. PG Lauren *The evolution of international human rights: Visions seen* (2003) 144. Also, in tragic irony, the inspirational phrases of the Declaration of the United Nations rang out during the same month in 1942 when Nazi leaders met at Wannasee and decided to implement the mass gassing and cremation of European Jews, the so-called 'Final Solution.' E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 545.

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proposals for the self-determination of colonised peoples.[76] The United States had made clear its hope that the post-war era would bring rapid change, looking toward full liberty for all peoples who, as Secretary of State Cordell Hull stated in 1942, were 'prepared and willing' to accept its responsibilities.[77]

However, the British suspected, probably correctly, that the United States agenda in this regard was not altogether altruistic, but a cloak for dismantling the remains of European empires and establishing in their place a collection of nominally independent states subservient to the United States' economic and military power.[78]

Moreover, the United States Navy was solicitous about maintaining complete and unfettered control of Japanese Pacific territories, which it viewed as crucial to American security.[79] Roosevelt therefore did allow the United States to occupy, 'as guardian,' some of the North Pacific islands that had been under Japanese mandate since the First World War.[80] This only reinforced the British belief that the United States intended to act in the

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[76] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 91. As set forth in greater detail below, the reference to the 'rights of all peoples' to choose their own governments and 'sovereign rights' in the third principle of the Atlantic Charter became the subject of disputing interpretations by the United States - which viewed it as a general right of self-determination in accordance with its anti-colonial position - and Great Britain - which insisted that it referred only to self-determination for nation under Nazi tyranny, and most definitely not to its own Dominions.

[77] As quoted in LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 375. See also KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 171.

[78] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 91. Likewise, Ramcharan states that United States emphasis on the principle of self-determination happened to coincide with its interests to dismantle European empires and open up markets for is expanding productive base. BG Ramcharan 'Norms and machinery' in TG Weiss & S Daws (eds) *The Oxford handbook on the United Nations* (2007) 441. Louis notes that the British suspected that the American might use the principle of self-determination to subvert the British Empire. By the time of the Second World War, the principle of self-determination had been identified, in Conservative circles at least, as one of the most dangerous spirits escaping from the Pandora's box of the Paris Peace Conference. WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 205.

[79] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 186. See also M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 63.

[80] WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 150. The explanation given by Roosevelt and the Joint Chiefs was that such control would prevent Japan from ever posing a threat to the region again. *Ibid* 155.

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old colonial style, expanding in the Pacific as a means of becoming the region's key Western power.[81]

One of the first, if not the first, of all governmental proposals for an international document on human rights to emerge from the war, was produced by a special legal subcommittee of the US State Department in 1942, specifically tasked with formulating such a document.[82] Durward V Sandifer, legal advisor to the subcommittee, warned that the issue of implementation of human rights standards raised perilous political obstacles for the United States.[83]

Sandifer's recommended solution was that the United States could agree to human rights principles, without accepting coercive enforcement measures, judicial review of any kind, or even specific language that might eventually give rise to concrete obligations.[84] By this method, powerful states could promote human right in foreign policy, and even pressure other states to respect human rights, without being bound to take any action against interests.[85]

In a classified document Sandifer wrote:[86]

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[81] *Ibid* 150. On Tuesday, 26 June 1945, the British diplomat and historian, Charles Kingsley Webster, noted in his diary with regard to the trusteeship provisions of the Charter as finally adopted: 'The Trusteeship sections . . . have been meant to enable the U.S. to obtain the Pacific islands innocent of all control except by a body on which she has a veto . . .' As quoted in PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 69 - 71. '[B]ut for the rest,' Webster continued, 'the matter remains exactly as before except there is a sort of machinery if states desire to put their colonial territories under it. We have no such intention and I am sure no other power has . . .' As quoted in *Ibid*.

[82] PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 7. The committee within the State Department responsible for the Administration's post-war planning carefully considered human rights, and their place within the United Nations framework. Commencing in 1942, the committee prepared numerous proposals for articles and bills of rights to be incorporated into the Charter of the post-war organisation. However, in the course of drafting these proposals, State Department officials were forced to confront the practical political difficulties that lay behind the lofty words. They were especially concerned about the unresolved issue of enforcement, and its implications for national sovereignty. K Sellars *The rise and rise of human rights* (2002) xi, xii.

[83] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 386. Sandifer wrote: 'The signature by all states of a general convention of the rights of man would be at present unattainable if such a convention should include any sanctions.' It would be preferable, he suggested, to work towards a declaration in which 'reliance is placed primarily up the good faith of the contracting parties.' As quoted in *Ibid*.

[84] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 104 - 105.

[85] *Ibid* 105.

[86] As quoted in *Ibid*.

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> It is a device used many times in the past. States agree on the adoption of new rules of law or formulation of existing rules and proclaim them to the world in a formal international agreement. Reliance is placed primarily upon the good faith of the contracting parties.

Ultimately, however, the work of the subcommittee came to naught. Even the *concept* of an international bill of rights to be appended to the Charter of the United Nations was abandoned from the United States proposals at Dumbarton Oaks.[87]

For seven weeks in the summer and autumn of 1944,[88] representatives of the United States, Great Britain, the Soviet Union, and, belatedly, China,[89] met to plan a new post-war organisation at Dumbarton Oaks, a Georgetown estate above Rock Creek Park in the secluded outskirts of Washington, DC.[90] Edward Stettinius, Under-Secretary of State of the United States, Alexander Cadogan, the British Under-Secretary of Foreign Affairs, Andrei Gromyko, Soviet Ambassador to the United States, and K Wellington Koo, Chinese Ambassador in Washington, headed their respective delegations.[91]

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[87] *Ibid*. The suggestion that the United Nations Charter should include an international bill of rights was rejected by Stettinius, on behalf of the United States, with full acquiescence of the other major powers. The reason was almost certainly the fear that, if the Charter did include such a bill of rights, there would be no hope, given the attitudes of right wing senators from southern states, of securing the two-thirds majority required in the Senate for its ratification. If the United States failed to become a member of the new organisation, but remained outside, as had happened after the First World War, the new institution was doomed from the start. Simpson asserts that the attitude of the United States Administration was 'understandable.' WB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 63.

[88] The exploratory conversations for the establishment of a new international organisation took place in two phases: From 21 August 1944 to 28 September 1944, between the representatives of the United States, the United Kingdom, and the Soviet Union; and from 29 September 1944 to 7 October 1944, between the United States, the United Kingdom, and China. The *Proposals for the establishment of a general international organisation*, which has become known as the 'Dumbarton Oaks Proposals,' was published by the four sponsoring powers on 9 October 1944.

[89] Because of the poor state of Sino-Soviet relations (the Soviet Union was, officially at least, still in alliance with Japan, while China was at war with the latter), it was agreed that these two powers should not attend together - the Soviet Union would take part in the first part of the conference, and China in the second. The Russian phase of the conference lasted more than five weeks, whereas the Chinese phase were slightly longer than one week in duration. RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 229. The was partly because the Chinese were less disagreeable, and partly because they were thought less important by the British. E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 25. Churchill had bitterly resented the inclusion of China, recognising that it would align with the United States on most issues, especially the colonial question. He disparaged China as a lesser power whose participation represented a 'faggot vote on the side of the United States in any attempt to liquidate the British overseas empire.' Churchill as quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 110.

[90] PG Lauren *The evolution of international human rights: Visions seen* (2003) 161. Harvard University owned the estate, and made it available to the United States government for this purpose. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 109; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 239. The discussions were conducted at the technical level, with foreign affairs experts negotiating the basic agreements, which were then to be executed by their respective foreign ministers. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 109.

[91] *Ibid*.

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The aim of the Dumbarton Oaks discussions was generally to decide upon the broad structure of an international organisation to replace the League of Nations;[92] to formulate the principles that would govern the functioning of the organisation; and to establish the procedures pursuant to which it would perform its functions and, if required, enforce its decisions.[93]

Significantly, none of the proposals submitted by the delegations at Dumbarton Oaks so much as mentioned human rights.[94] However, Roosevelt was concerned that the absence of any mention of human rights would cause a scandal in United States civil society in light of his own championing of the concept, not to mention public outrage in response to wartime atrocities.[95] The United States thus proposed a formulation which would, as Mazower writes, 'allow [the Great Powers] to have their cake and eat it too, posing as defenders of *both* universal human rights *and* domestic state rights':[96]

> The International Organisation should refrain from intervention in the internal affairs of any state, it being the responsibility of each state to see that conditions prevailing within its jurisdiction do not endanger international peace and security and, to this end, to respect human rights and fundamental freedoms of all its people and to govern in accordance with the principles of humanity and justice.

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[92] The inscription on the mansion dating from 1801 - *Quod severes metes* (Reap what you sow) - served as a constant reminder to the Dumbarton Oaks delegates to attempt avoid the pitfalls of the first attempts at multilateral post-war order, barely twenty five years previously. E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 142; PG Lauren *The evolution of international human rights: Visions seen* (2003) 161.

[93] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 239; PG Lauren *The evolution of international human rights: Visions seen* (2003) 161.

[94] Even the draft international bill of rights prepared by the State Department's legal subcommittee was excluded from the preparatory materials. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 112. Likewise, Simpson notes that protection of human rights hardly featured in the early official planning for the establishment of the United Nations. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 221. Mazower also makes clear that, at Dumbarton Oaks, 'human rights were scarcely mentioned.' The priority, first and foremost, was agreement upon the general functioning of the organisation and the extent to which the Great Powers would remain in control of its operations. M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 391. As the Big Three developed their proposals, Moyn notes, 'no diplomat so much as mentioned human rights in the runup to the critical planning meetings that began in late August at . . . Dumbarton Oaks . . .' When the Chinese leaked the principal preparatory documents to the *New York Times*, 'those with eyes to see' understood immediately that the true goal of the prospective United Nations was 'to balance great powers, not to moralize (let alone legalize) the world.' S Moyn *The last utopia: Human rights in history* (2010) 56.

[95] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 112.

[96] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 392 (Mazower's emphasis).

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The Soviet and British delegations were not prepared to support even such a general statement that 'took away with one hand what it gave with the other.'[97] They feared that even a general statement about human rights and fundamental freedoms could open a Pandora's box, and release dangerous forces that could seriously threaten their sovereignty and power.[98]

However, as in 1919, there was 'an inconvenient voice from the East' - on this occasion the Chinese delegation.[99] China officially proposed that the charter of the new post-war international organisation should include a clear and overarching commitment to strive to secure social welfare, support the right of self-determination, and uphold 'the principle of equality of all states and races.'[100] The Chinese proposal 'drew fire at once'[101] from the other Great Powers.[102]

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[97] PG Lauren *The evolution of international human rights: Visions seen* (2003) 162.

[98] *Ibid* 163. Cadogen pointed out that the second part of the proposed clause addressing human rights contradicted the first dealing with non-intervention. He also expressed concern that, in the absence of universal agreement on the meaning an content of human rights, criticism might at some point be levelled at any member state, for example, the British Empire. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 113. Gromyko dismissed the reference to human rights and basic freedoms as 'not germane to the main task of an international organization.' *Ibid* 113. According to the American minutes of the proceedings: 'Sir Alexander Cadogen expressed opposition to the reference to human rights and the fundamental freedoms, saying he thought such a provision would give rise to the possibility that the organisation might engage in criticism of the internal organisation of member states. Ambassador Gromyko said it was his personal opinion that the reference to human rights and basic freedoms was not germane to the main tasks of an intentional organisation.' As quoted in M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 391. The priority remained, first and foremost, to reach agreement upon the general organs, functioning of the organisation, and the extent to which Roosevelt's 'Four Policemen' - The United States, the United Kingdom, the Soviet Union, and China - would remain in control of its operations.

[99] *Ibid*. In mid-September, the radio commentator Wilfred Fletcher had reported that the Chinese were 'about to ruffle the smooth waters of the Dumbarton Oaks Conference' by submitting a proposal for racial equality in the new United Nations Organization. RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 244.

[100] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 161. The Chinese proposal for the new organisation's fundamental principles was *verbatim*:
1. The International Organization shall be universal in character, to include eventually all states.
2. The principle of equality of all states and all races shall be upheld.
As quoted in PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 10. Normand and Zaidi states that the Chinese delegation presented their proposal partly in response to racist immigration policies in Australia, New Zealand, and the United States. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 110.

[101] PG Lauren *The evolution of international human rights: Visions seen* (2003) 162.

[102] Gromyko opposed the Chinese proposal immediately and categorically. Cadogen expressed concern about any implications that might enable the new international organisation to engage in criticism of internal policies of member states. *Ibid*.

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The United States, fearing a repeat of the racial equality debacle with Japan at the Paris Peace Conference in 1919, and political opposition in the United States Senate, persuaded China to forsake the proposal before it saw the light of day.[103] In a step reminiscent of the Paris Peace Conference, the United States, the United Kingdom, and the Soviet Union also eliminated any mention of 'racial equality,' as proposed by the Chinese delegation.[104]

Nevertheless, out of concern for public criticism, Roosevelt remained insistent on the inclusion of *some* reference to 'human rights' in the proposals.[105] After lengthy deliberations, it was agreed that the human rights idea would be included as a 'negligible line,'[106] 'buried out of sight'[107] at the end of the first section of Chapter IX Section A paragraph 1.[108] Chapter IX dealt with 'Arrangements for Economic and Social Cooperation.' The agreed-upon text read:[109]

> With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and *promote respect for human rights and fundamental freedoms*.

It was the difficulty of drafting phraseology that would not 'encourage trouble-making intervention, and cause difficulty both in the USA and with smaller powers,' that produced

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[103] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 111.

[104] PG Lauren *The evolution of international human rights: Visions seen* (2003) 163.

[105] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 391. Stettinius dutifully informed Cadogan that 'the president attaches the greatest importance to the inclusion in the document of some reference to human rights.' As quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 112. Cadogan reported to his superiors in London: 'The Americans pressed very hard for the inclusion of . . . some reference to 'human rights and fundamental freedoms' since otherwise they would be subject to great criticism in the United States.' As quoted in *Ibid* 113. The British and Soviet delegations were not unsympathetic to the American point of view. As a British delegate, Gladwyn Jebb, explained to his United States counterpart, Alger Hiss: 'It would be farcical to give the public the impression that the delegates could not agree to the need to safeguard human rights.' *Ibid*. From the public point of view it might indeed have been farcical, yet it also would have been an accurate reflection of the negotiations, which concluded with an undertaking to 'promote' human rights and not 'safeguard' them. For, as Normand and Zaidi point out, in the legal lexicon of international agreements, 'to promote' is a far weaker term than, for example, to 'safeguard,' to 'protect,' to guarantee,' to 'fulfil,' or to 'enforce.' 'Promotion' implies little in the way of concrete obligations. *Ibid*.

[106] S Moyn *The last utopia: Human rights in history* (2010) 56.

[107] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 113.

[108] *Ibid*.

[109] As quoted in JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 474 (My emphasis).

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this single, opaque reference to 'human rights' in the Dumbarton Oaks Proposals.[110] Brian Simpson concludes: 'It is difficult to believe that Stettinius or Gromyko imagined it was going to make any difference to life. Indeed the aim was to ensure it did not.'[111]

The Big Three (the United States, the United Kingdom, and the Soviet Union) had recognised the ideological value of abstract human rights principles. However, after serving their purpose well of mobilising the public and state support in the war against the Axis powers, when it came time for the Big Three to negotiate concrete post-war arrangements, 'human rights were summarily dropped from the list of core concerns.'[112] Despite the grand rhetoric, the Big Three were absorbed by the looming struggle for supremacy on the world stage, the post-war divisions of power, and the structure of the new international organisation.[113]

Ultimately, the negotiators at Dumbarton Oaks created an organisation that would fail to fulfil Tennyson's dream of 'the Parliament of Man, the Federation of the World,'[114] primarily because they feared the effect that such a strong body might have on their own national objectives for the post-war era.[115]

The Dumbarton Oaks Proposals were also subjected to much criticism on other grounds.[116] Lesser powers resented the manner in which the future world organisation had been largely settled by the major powers; and the way in which these powers

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[110] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 247. This represented what Sumner Welles had described as the 'powerful influences' opposed to investing the new United Nations with too much authority. PG Lauren *The evolution of international human rights: Visions seen* (2003) 163.

[111] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 247.

[112] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 107. Even prior to the Dumbarton Oaks discussions, during a series of meetings between the Big Three in 1943, 'human rights' - 'the supposed linchpin of the global crusade against tyranny' - became utterly irrelevant and died an ignominious death. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 109.

[113] BG Ramcharan 'Norms and machinery' in TG Weiss & S Daws (eds) *The Oxford handbook on the United Nations* (2007) 441. They stood apathetic to the idea of incorporating inspiring language about human rights into international agreements. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 120; BG Ramcharan 'Norms and machinery' in TG Weiss & S Daws (eds) *The Oxford handbook on the United Nations* (2007) 441.

[114] Alfred, Lord Tennyson *Locksley Hall* (1842).

[115] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 257.

[116] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 250.

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proposed to ensure their continued ascendancy through their permanent seats on the Security Council and the right of veto.

The influential columnist, Walter Lippmann, stated to Alger Hiss on 20 October 1944 that he viewed the Security Council really as just a continuation of the Grand Alliance in disguise.[117] George F. Kennan, a State Department official, referred to the Dumbarton Oaks Proposals as the 'new League of Nations,' and 'a cleverly disguised statute for the collaboration of the strong in the brow-beating of the weak.'[118]

It was at Dumbarton Oaks that, for those dreaming of a strong United Nations organisation, 'the shadow fell between the word and the deed.'[119] The rise of conflicting objectives among the Big Three themselves would place serious limitations on what the delegates could accomplish at Dumbarton Oaks. Increasingly, the Big Three would regard their own interests as too important to place in the trust of others, especially another major power with which they might disagree.[120]

1.3 Great power hegemony

In his conception of the United Nations, Roosevelt exhibited an uncanny ability to accomplish two seemingly contradictory goals at the same time. His visions combined an appeal to universal principles of peace, freedom, and human rights, with an organisational structure deliberately designed to expand United States political and economic dominance

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[117] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 249 - 250.

[118] *Ibid* 250.

[119] *Ibid* x. At Dumbarton Oaks in August and September of 1944, representatives from the United States, Great Britain, and the Soviet Union decided that their own individual interests were too important to entrust to a world body, and that the wartime dream of an international peacekeeping agency might interfere with their own nationalistic ambitions of hegemony. The wartime dream of world peace led to plans for a post-war organisation that lacked the authority to achieve it. *Ibid*.

[120] *Ibid* 4. The Anglo-American countries suspected that the Soviets intended to use the new organisation as an instrument to legitimise their post-war hegemony over their smaller neighbours. That was the perceived reason for Stalin to cling so tenaciously to the unlimited Great Power veto. Nor did the Soviet Union trust the intentions of their Western allies. The Russians believed that especially the Americans meant to use the United Nations, 'saturated as it inevitably would be with their capitalist friends and clients,' to cement their control over the entire world. And, even the British had to balance their concern over the Soviet menace with their 'suspicion that the United States intended to employ the new world organization to make the sun finally set on their empire.' *Ibid* 247. Alger Hiss, the acting Secretary-General of the United Nations during the San Francisco Conference, and member of the American delegation, stated that the British were often suspicious of the Americans - all the Great Powers are suspicious of other Great Powers - in spite of the close coordination of policy between Great Britain and the United States. Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 22.

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of world affairs.[121] Thus, to Roosevelt's mind, international institutions could be constructed to face simultaneously in two radically different directions:[122]

> One face would be turned to mass popular politics, both within the US and internationally. This would be the inspiring ethical face, offering promise of a better world. But simultaneously, the internal face of the organisation could be shaped in an entirely different and indeed opposite way, as a framework for the power politics of the hegemon . . . . Far from being an attempt to escape from the realities of great-power politics, Roosevelt's scheme for the UN was his way of confronting and pursuing them.

Roosevelt had not the least faith in 'that myth of international law, "the sovereign equality of states."'[123] He believed that the 'Four Policemen'[124] - the United States, the United Kingdom, the Soviet Union, and the Republic of China - would shoulder the greatest burden in maintaining world peace, and therefore must exercise paramount authority in the new organisation.[125] Likewise, the underlying assumption of Churchill's vision for the new post-war international organisation was great power leadership.[126] As Churchill stated to Stalin, the Big Three:[127]

> [W]ere the trustees for the peace of the world. If they failed there would be perhaps 100 years of chaos. If they were strong they would carry our their trusteeship.[128]

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[121] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 121.

[122] As quoted in *Ibid*

[123] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 221. This was exemplified by his insistence that the Big Four sign the Declaration of the United Nation before any other nation, and in his presumed order of importance: the United States, the United Kingdom, the Soviet Union, and China. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 93.

[124] Roosevelt's conception of the Four Policemen seemed to indicate strictly an extension of the Great Powers' might and authority, to be used as they saw fit to keep the peace. RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 2. See also E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 23 -24.

[125] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 2; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 221. Roosevelt envisioned the post-war international organisation as a concert of great powers structured according to the principle of 'containment by integration,' especially of the Soviet Union. K Sellars *The rise and rise of human rights* (2002) xi.

[126] In Hughes' opinion, Churchill did not believe that the United Nations would inaugurate a revolution in international politics. Rather, the new structure would 'be aided to the utmost by the ordinary channels of friendly diplomatic intercourse which it in no way supersedes.' Churchill as quoted in EJ Hughes 'Winston Churchill and the formation of the United Nations Organization' (1974) 9 *Journal of Contemporary History* 192 - 193.

[127] As quoted in *Ibid* 187.

[128] In September of 1942, within the Foreign Office, a Four Power Plan had been drawn up largely by Gladwyn Jebb. Hughes observes that the principles contained in the memorandum were 'based squarely upon great power leadership in the post-war world.' *Ibid* 181. Churchill questioned the basic assumption of four power leadership, because he believed that China would be a 'faggot vote' for the United States in any attempt to liquidate the British Empire. Churchill as quoted in *Ibid*.

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As the prelude to the Dumbarton Oaks discussions, the United States organised a series of meetings in late 1943 - at Quebec, Moscow, and Teheran - to determine the configuration of the post-world order.[129] These meetings addressed and resolved a number of critical security issues, but not at one was the issue of human rights even raised. Significantly, no state beyond the Big Three were granted access, let alone participated, in these negotiations.[130] 'Never before,' comment Normand and Zaidi, 'had so few decided so many fundamental global issues'[131] - global security and policing, establishment of national boundaries and regional spheres of influence, respect for sovereignty and domestic jurisdiction, treatment of defeated nations, and disposition of colonial and dependent territories.[132]

The Four Policemen would have sole authority over peace and security as permanent veto-bearing members[133] of a small executive council,[134] the other members of which would serve brief, rotating terms.[135] Simpson notes that the General Assembly, where the minor powers would have their say, was by design a weak institution with essentially consultative functions.[136]

It has long been part of historical myth that the United Nations was a truly global undertaking, developed through discussions and consultations, not only between the Great

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[129] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 108.

[130] The new international organisation would be built upon 'a breathtaking dictatorship by a handful of great powers.' *Ibid*.

[131] *Ibid*.

[132] *Ibid*.

[133] Alger Hiss, a member of the United States delegation at San Francisco and acting Secretary General of the United Nations, stated that the 'whole issue of the relationship between the veto and international law could be looked at as a very cynical disregard for international law': 'In other words, if a great power violates international law, it can prevent enforcement against itself with a veto. But I think we were looking at it from what we thought were the practical aspects of the only way the world could peaceably exist. This would be by collaboration of the great powers. Therefore the smaller powers had much to gain from this, and they did accept it finally.' Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 40.

[134] The Security Council would be comprised of the Big Four - the United States, the United Kingdom, the Soviet Union, and China - and would operate, in Roosevelt's words, as the 'Four Policemen' of the world. K Sellars *The rise and rise of human rights* (2002) xi.

[135] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 108.

[136] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 250. Sellars describes the General Assembly, as envisioned by the Big Three, as 'basically a sop to the smaller nations: a talking shop with responsibility for non-security issues, such as humanitarian and social affairs.' K Sellars *The rise and rise of human rights* (2002) xi.

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Powers, but all the nations fighting on the Allied side.[137] It was only at the United Nations Conference on International Organization (the 'San Francisco Conference'), which opened at the Opera House in San Francisco on 25 April 1945, that the vast majority of the nations of the world would be given the opportunity to express their views on the kind of international organisation to be established.[138]

By this time, however, the Big Three had already prepared a comprehensive draft, in the form of the Dumbarton Oaks Proposals, that expounded upon the preferred form of the organisation and points of principle agreed upon by the Great Powers.[139] Thus, although putting the Charter in its final form was the work of all who participated in the San Francisco Conference,[140] there is no denying the fact that the Four Policemen and France, and more particularly the United States and the Soviet Union, exercised decisive influence.[141]

The San Francisco drama offered a play within a play, as the Great Powers continued their exclusive consultations during the Conference itself. The public saw the open sessions with 50 delegations participating; simultaneously, however, the Big Five (the

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[137] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 84.

[138] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 36.

[139] *Ibid*.

[140] Bentwhich notes that the Charter, which was in the end adopted unanimously and without reservation, was the outcome of long debate between the representatives of the Big Five powers, and the representatives of the smaller 45. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 48.

[141] LM Goodrich & AP Simons *The United Nations and the maintenance of international peace and security* (1955) 10.

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Four Policemen to which France had been added early on during the Conference) were meeting frequently in secret session in the Fairmont Hotel.[142]

The pervasive influence of the Great Powers was quite openly recognised at the time.[143] No one was prepared to argue that the United Nations could succeed without the full participation of these governments.[144] In his report to the president on the work of the conference, United States Secretary of State Stettinius stated:[145]

> It was taken as axiomatic at Dumbarton Oaks and continued to be the view of the Sponsoring Governments at San Francisco, that the cornerstone of world security is the unity of those nations which formed the core of the grand alliance against the Axis.

The most intensive discussions at San Francisco were about the international security system contained in the Dumbarton Oaks proposals.[146] To this end, the Great Powers urged the other nations to approve the controlling mechanism of a 'veto' for permanent members of the Security Council.[147] This would establish co-dependency, and guarantee

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[142] LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 371 - 372. It was to these informal meetings that all major differences were remitted, and that effectively controlled the Conference. For the smaller powers were well aware that the new international organisation cannot come into existence against the express wishes of the Great Powers. E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 43. In her memoirs, Virginia Gildersleeve, a member of the United States delegation at San Francisco, acknowledges that, soon after the Conference commenced, the chief representatives of the Big Five began to meet frequently, and she was often called away from other proceedings to attend these 'most important conferences.' These 'five power conferences' most often took place in the drawing room of the penthouse suite of the Fairmont Hotel. At first, these meeting were attended by the four sponsoring powers - the United States, the United Kingdom, the Soviet Union, and China - but France was very soon admitted to this exclusive group. These Big Five conferences were attended by the leader of each delegation and generally three or four other delegates, except for the United States, who always had all seven members of the its delegation present. VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 335 - 336. At these conferences, the five powers agreed on what attitudes should be taken regarding the questions that were arising before the various technical committees and other groups. Gildersleeve points out that, once the five great powers had agreed on a position, all were 'obliged to hold it unless released by the group.' *Ibid* 335. Of course, Gildersleeve notes, the other nations not included in the big five 'disliked this arrangement extremely, since once the five powers had agreed upon something, it was almost impossible to change . . .' *Ibid* 336 - 337.

[143] LM Goodrich & AP Simons *The United Nations and the maintenance of international peace and security* (1955) 10.

[144] *Ibid*.

[145] As quoted in *Ibid* 11 - 12.

[146] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 44.

[147] The framers of the United Nations Charter did not put their faith in the new initiative of international human rights, but in structural innovations that they had built into the organisation. Their approach was two-fold. First, permanent seats on the Security Council were assigned to the five war-time allies: The United States, the United Kingdom, the Soviet Union, China, and France. Nowhere does the Charter refer to these states as the 'Great Powers,' and nowhere does it state that these states would have a veto over decisions taken by the Council. What the Charter does state is that all decisions by the Security Council, save for matters of procedure, requires seven affirmative votes, 'including the concurring votes of the permanent members.' However, the studied neutrality of this language did not fool anybody. DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 213 - 214.

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each permanent member the rights to arrest any proposed action it considered vital to its own national interests.[148] Senator Thomas Connally, one of the United States delegates, described the veto as 'the heart and the stomach and the liver' of the United Nations.[149]

The unique prerogatives that the Great Powers had reserved for themselves in this regard were scarcely calculated to endear themselves to the smaller powers, deprived of those privileges, but in fact were, with a few notable exceptions, meekly accepted by them.[150] There were stormy debates over the 'Great Power veto,' debates led by the smaller powers and fuelled by resentment over this arrogation of privilege.[151]

Senator Arthur Vandenberg, the senior member of the United States delegation at San Francisco, is reported to have angrily declared to a protesting Mexican delegate, that he could either have a United Nations with a Permanent Five veto - or no United Nations at all.[152] Realistically and reluctantly, the smaller powers came to recognise that, if peace

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[148] K Sellars *The rise and rise of human rights* (2002) 6.

[149] *Ibid*. Interestingly, Virginia Gildersleeve, the sole female member of the United States delegation, acknowledged in her memoirs that she personally, nor she thought anyone else, could force how the veto was going to operate in practice: 'We did not conceive of its being used so often by the Soviet Union, nor did we envisage a world which should be so sharply divided between two great powers and their satellites. Moreover, we did not quite realize the difficulty involved in permanently naming the five great powers. Which *are* the five great powers of the world today? Which will they be a hundred years hence?' VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 338 (Gildersleeve's emphasis).

[150] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 44 - 45. Luard states: 'The surprising feature of the Conference is not that the Charter as it finally emerged was close to the Dumbarton Oaks draft - for in the last resort, the Big Four, if only they kept united, had only to dig int heir heels and threaten non co-operation to make this inevitable - it is that, with a few notable exceptions, all the essential features of that draft were accepted almost without resistance, even without serious challenge, from the rest.' *Ibid* 44. The reality was, writes Paul Kennedy, that 'Great Powers would do what Great Powers choose to do.' P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 30.

[151] DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 214. At San Francisco, during the seemingly interminable debates over the veto power in the Security Council, the smaller powers bristled at the notion that they would have to entrust to five Great Powers the task of deciding what their common destiny would be. LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 367.

[152] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 26 - 27. When representatives of the smaller states attempted to object to the right of veto, Senator Connally strode up to the podium and tore up a copy of the proposed Charter in a dramatic gesture. Having done this, he reminded the delegates from the medium and small states that they would be guilty of the same behaviour if they continued to insist upon rejection of the proposed right of veto. B Broms *The United Nations* (1990) 43. In contrast to the strict attitude that the delegates of the Great Powers adopted in matters that were of supreme importance to them, they adopted a considerably more flexible attitude in matters of lesser importance. This was apparently due to their eagerness to show that the Charter as a whole was a product of cooperation between all the delegations and not a mere *diktat* on the part of the great powers. *Ibid* 44.

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was to be assured, the Great Powers who stood together as allies in the war must hold together in the world organisation.[153]

The Great Powers simply swept aside objections from the lesser powers that resented the monopoly of power by the Big Four.[154] The British and American delegations at San Francisco cooperated especially closely.[155] Alexander Cadogen wrote:[156]

> I generally sit next to the American and we conspire together to whack obstructionists on the head . . . I tell him he's our heavy artillery and I am the sniper. It works quite well [and we wiped the floor with a Mexican last night.]

Mazower remarks that many delegates left the founding conference believing that the new world body was 'shot through with hypocrisy.'[157] They saw its universalising rhetoric of freedom and rights as a veil masking the consolidation of a Great Power directorate - not all too different from the Axis powers in its imperious attitude to how the world's weak and poor should be governed.[158]

On Tuesday, 26 June 1945, Charles Kingsley Webster noted in his diary:[159]

> All [the speakers at the final plenary session] said the Charter was imperfect as of course it is. It is an Alliance of Great Powers embedded in a universal organisation as the Covenant also was. But this fact is more clearly denoted because of the fact that sanctions cannot even theoretically be put on a Great Power as it could in the Covenant . . . The Latin Americans have frothed but they were ultimately under U.S. control and have done little harm and I think accept the Charter quite happily . . .[160]

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[153] N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 45.

[154] K Sellars *The rise and rise of human rights* (2002) 6. At San Francisco, dissenters and doubters were silenced or ignored, notes Mazower. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 62.

[155] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 394.

[156] As quoted in *Ibid*.

[157] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 7. In this regard, Jannie Smuts, who accompanied his father to the San Francisco Conference wrote: 'For myself, unversed in the ways of big conferences, the proceedings seemed to verge on the hypocritical.' JC Smuts *Jan Christian Smuts: A biography* (1952) 387.

[158] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 7.

[159] As quoted in PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 69 - 71.

[160] Gladwyn Jebb, Webster's superior, cynically praised the ability of his American colleagues to 'delude' human rights activists at San Francisco into thinking 'that their objectives had been achieved in the present Charter.' As quoted in M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 7.

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There is much plausibility in idea that the United Nations was designed by, and to be largely operative as an instrument of, Great Power politics.[161] In comparing the idealistic war-time promises with the final result, *Time Magazine* concluded:[162]

> The [C]harter was written for a world of power, tempered by a little reason. It was a document produced by and designed for great concentrations of force, somewhat restrained by a great distrust of force.

1.4 National sovereignty

If the fundamental *realpolitik* principle of the new post-war organisation was great-power interests, its fundamental legal principle was national sovereignty and non-interference in domestic affairs.[163] Governments generally pursue what they believe to be their national interests, and insist on the right to manage their internal affairs free from outside interference.[164]

Traditionally, international law accepted this state of affairs. It was simply not concerned with matters within the domestic jurisdiction of states, including, specifically, the rights of individuals. The concept of state sovereignty implied that, although states could

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[161] *Ibid* (2009) 10.

[162] As quoted in S Moyn *The last utopia: Human rights in history* (2010) 60. See also PG Lauren *The evolution of international human rights: Visions seen* (2003) 194; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 62.

[163] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 114.

[164] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 12. Cmiel states that, prior to the 1940s, the presumption that sovereign nations had a free hand to do what they will inside their own borders, does not appear to have been 'dramatically challenged.' K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 126.

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legitimately complain if their citizens were ill-treated in other states, they were free to treat their own citizens - and abuse them - as they saw fit with virtual impunity.[165]

With regard to this doctrine, theory and practice mutually reinforced each another. Independent nation-states most often behaved exactly as they deemed expedient towards those under their control, free from outside interference. On the other hand, however, guarantees of human rights, by their very nature, impinge upon domestic jurisdiction, and thus immediately bring international law in conflict with the prerogatives of national sovereignty.[166]

During the war, United States Secretary of State, Cordell Hull, warned that:[167]

> [N]o nation should interfere in the domestic affairs of another, that the colonial powers should not be forced to dismantle their empires too precipitously, that the proposed United Nations organization should not be given too much power, and that the doctrine of national sovereignty should not be sacrificed on the altar of human rights.

Many of the leaders who spoke so eloquently about human rights, quickly noted that broad statements, such as those contained in the Atlantic Charter and United Nations Declaration, represented only aspirations, rather than binding legal agreements that might

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[165] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 12. John Foster Dulles, in advising the Republican members of the United States delegation at San Francisco, explained the principle of domestic jurisdiction as 'a basic principle of the organization,' and drew an analogy with 'federalism in the United States.' The analogy was fitting inasmuch as American federalism championed local control and governance which were answerable to popular sovereignty. However, in the southern states particularly, it also sheltered segregationist regimes from the reach of the United States Constitution. E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 192. According to Henkin, there are certain traditional assumptions implicit in the concept of national sovereignty. He identifies the following: (i) that the state system is committed exclusively to state values, principally to state autonomy and the impermeability of state territory, and to the welfare of the state as a monolithic entity; (ii) that international law is based on the consent of states, and is made only by states, for states; (iii) that the international system and international law do not, in fact may not, address what goes on within a state; in particular how a state treats its own inhabitants is no one else's business, not the business of the system, not the business of any other state; (iv) that a state may concern itself with what goes on inside another state only insofar as that impinges on its own interests (therefore, a state may presume to afford 'diplomatic protection' to its diplomats or nationals, but not to other human beings); (v) that international law cannot be 'enforced:' a state can only be persuaded, induced, to honour its international obligation and will do so only when it is in its national interest to do so; and (vi) that a state's sovereignty shields its constitutional system from international influences. L Henkin 'Human rights and state "sovereignty" (Sibley Lecture, March 1994)' (1995 - 1996) 25 *Georgia Journal of International and Comparative Law* 31 - 32.

[166] PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 8. 'We have taught the layman to worship the arch-fiction of the sovereign state,' forewarned the international legal scholar, Phillip C Jessup, 'and thereby have built a Maginot line against the invasion of new ideas in the international world, and behind that rampart the demagogue and the reactionary are enthroned.' As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 191 - 192. See also PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 19.

[167] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 105.

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imperil national interests or the doctrine of sovereignty.[168] Churchill described the Atlantic Charter as, 'no more than a simple, rough and ready, war-time statement of a goal' towards which the Allied governments 'mean to make their way,' instead of firm commitments.[169]

The official attitude within the United Kingdom Foreign Office with regard to the interplay between human rights and national sovereignty, was expressed in a memorandum in June of 1944:[170]

> It seems evident that ideas connected with a 'Bill of Rights' for individuals and groups occupy a prominent place at the moment in British liberal thinking . . . There are only faint signs that the real difficulty in these proposals has been understood, viz. that they involve . . . once generalities have been left behind and the possibilities of international pressure envisaged, a degree of interference with municipal law that no State, and certainly no Great Power, is likely to tolerate.

Senator Vandenburg of the United States delegation at San Francisco, stated candidly at the outset that national sovereignty and the prevention of outside interference into domestic affairs were matters 'dear to our hearts.'[171]

HV Evatt, Minister of External Affairs of Australia, formulated the fundamental issue thus:[172]

> Every country represented in this conference has its own internal problems, its own vital spheres of domestic policy in which it cannot, without forfeiting its very existence as a state, permit external intervention.[173]

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[168] PG Lauren *The evolution of international human rights: Visions seen* (2003) 155.

[169] As quoted in *Ibid*.

[170] As quoted in AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 212.

[171] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 192. See also PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 14.

[172] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 192.

[173] Evatt championed the view that the proposed text of the Charter regarding non-intervention into matters of domestic jurisdiction was not restrictive enough. According to Simpson, Evatt's prime incentive was fear that the United States might meddle into Australia's racially discriminatory immigration policies. Evatt therefore proposed an amendment (the phrase in italics in the quotation following) to enhance the preservation of state sovereignty by permitting intervention only in the case of enforcement measures: '[B]ut this principle [*i.e.*, non-intervention in matters of domestic concern] shall not prejudice the application of *enforcement measures* under Chapter VIII Section B.' As quoted in AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 265.

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Evatt found a sympathetic ear in the Great Powers.[174] The United Kingdom was desirous to maintain unity among the Sponsoring Powers, and to support the Dominions, in addition to the advantages to be gained from protecting its own domestic jurisdiction, especially in relation to the colonies.[175] Churchill had previously declared emphatically that he would never 'consent under any circumstances to the United Nations thrusting interfering fingers in the very life of the British Empire.'[176] The United States delegates were eager to pre-empt any possible opposition in Congress, and not to exacerbate what John Foster Dulles called 'the Negro problem in the South.' Stalin's Soviet Union certainly could not brook the interference of the United Nations in its internal matters.[177]

As Mazower observes, 'the higher human rights moved up the agenda, the greater the pressure for a *further* limitation on the new organization's ability to intervene in the domestic affairs of members states.'[178] At San Francisco, Dulles, on behalf of the four Sponsoring States, justified a rigorous domestic jurisdiction clause. He argued that it was necessary to ensure that the organisation did not 'go behind the governments to intervene directly to impose the pattern which the Economic and Social Council might conceivably recommend on each one of the 50 member states.'[179]

Although the San Francisco Conference may have allowed what Cadogen called, 'the little fellows,' their voice, the resulting Charter reflected the Great Powers' 'keen interest in preserving their sovereignty intact.'[180] After all was said and done, the Big Five ensured that the final text included - or so they believed - 'one of the most critical of all provisions in the entire text,' to wit Article 2(7):

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[174] *Ibid*.

[175] *Ibid*.

[176] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 179.

[177] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 265.

[178] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 393.

[179] As quoted in *Ibid*.

[180] *Ibid* 394.

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> Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement.[181]

In the words of Senator Connally, this provision 'was sufficient to overpower all other considerations.'[182] Simpson remarks that: '[T]he major powers and many of the lesser powers were united in wishing to have a Charter which clipped the wings of the new organization.'[183] In evaluating the draft provisions relating to *international* human rights, enshrined in Article 1, and *national* sovereignty, enshrined in Article 2, American political scientist, Karl Loewenstein remarked: '[W]hat is offered here with the right hand is forthwith taken away with the left.'[184]

Nevertheless, after the United Nations came into existence, there were, from the very beginning, attempts in the General Assembly to raise - as human rights issues - matters which formerly would have been regarded as resorting under a state's domestic jurisdiction, and thus outside the competence of the United Nations pursuant to Article 2(7) of the Charter.[185] To the unpleasant surprise of many states, particularly the British

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[181] In conformity with the principle of non-intervention, Article 15(8) of the Covenant of the League of Nations had circumscribed the organisation's powers of international dispute resolution: 'If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that [p]arty, the Council shall so report and make no recommendation as to its settlement.' As reprinted in AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 92. Article 15(8) was interpreted as excluding any possibility of active intervention over violations of individual rights, unless of course treaty obligations were invoked. *Ibid*. The Dumbarton Oaks proposals contained a domestic jurisdiction provisions closely modelled on the Covenant's Article 15(8). M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 393.

[182] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 193.

[183] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 265. Lauren notes that the domestic jurisdiction clause (Article 2(7)) appeared 'to slash with a single stroke the very life out of all the articles dealing with human rights.' PG Lauren *The evolution of international human rights: Visions seen* (2003) 194. On 11 July 1945, WEB Du Bois declared, in testimony before the Senate Foreign Relations Committee, that the final Charter reflected nothing more than 'the national interests, the economic rivalries, and the selfish demands' of those governments represented at San Francisco. He argued that the United Nations should serve 'not only white people of English decent, but Latins and Slavs, and the yellow, brown, and black peoples of America, Asia, and Africa.' This new international organisation, Du Bois concluded, should: '[M]ake clear and unequivocal the straightforward stand of the civilised world for race equality, and the universal application of the democratic way of life, not simply as philanthropy and justice, but to save human civilization from suicide. What was true of the United States in the past is true of world civilization today - we cannot exist half slave and half free.' As quoted in *Ibid* 195. See also PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 20 - 21.

[184] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 191.

[185] The General Assembly began to emerge as a forum for, at the least, publicising human rights abuses internationally. M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 395. See also AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 308.

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Dominions, the General Assembly soon showed itself to adopt a restrictive interpretation of this provision.[186]

As early as the second part of the first session of the General Assembly in 1946, the delegation of India succeeded in placing on the agenda an item concerning the discriminatory treatment of people of Indian origin in South Africa.[187] As set forth in Chapter 9 below, South Africa did not prevail in its argument that the issue fell outside the scope of the United Nations' jurisdiction pursuant to Article 2(7).

International law and international relations are, and are likely to remain, suspended between these two extremes: on the one hand, the pursuit of utopian ideals for the world, and, on the other, a defence of narrow self-interest, often prompted by the dictates of the *realpolitik* of the moment.

How, then, are the values that underlie the founding of one of the cornerstones of the current international order - the United Nations - to be understood?

According to Mazower, hardwired from its inception into the League of Nations and, subsequently, into its successor, the United Nations, was an inevitable tension between the narrower national interests that the Great Powers sought to promote through them, and the universal ideals and the rhetoric in which the process to establish these bodies was couched.[188] This tension is, in Paul Kennedy's words, 'inherent, persistent, and unavoidable.'[189]

2. Moral compartmentalisation

The lasting legacy of the realist movement has been the insight that law cannot be understood separately from the people who make it. Any attempt to fathom the international legal system, without some understanding of the complex and sometimes mixed motivations of its key participants, is bound to be superficial and incomplete.[190]

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[186] *Ibid*.

[187] RB Ballinger 'UN action on human rights in South Africa' in E Luard (ed) *The international protection of human rights* (1967) 251.

[188] M Mazower *Governing the world: The history of an idea* (2012) xv.

[189] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) xii.

[190] Koskenniemi, for example, explores the development of international law against the background of the biographical details of its main European proponents during the period 1870 - 1960. M Koskenniemi, *The gentle civilizer of nations: The rise and fall of International Law 1870-1960* (2001).

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It is clear that many of the great social innovators of world order promote values for humanity which they may not yet be prepared to accept themselves, or the consequences of which they may not yet be able to foresee. They stand with one foot on each side of the chasm over which humanity is to cross. They are ahead of their times, but, in fundamental respects, also ahead of themselves.

Psychologists refer to this phenomenon as moral compartmentalisation.[191] In this context, the psychologist, Steven Pinker, and the human rights scholar, Paul Gordon Lauren, illustrate the sometimes startling dual morality of the so-called 'progressive' United States Presidents of the late 19th and early 20th centuries - Woodrow Wilson, Theodore Roosevelt, and Franklin Roosevelt - and their contemporary across the Atlantic, Winston Churchill.

These statesmen could in many respects be considered 'enlightened,' yet they held views about racial issues and the permissibility of the use of force that today generally would be regarded as astonishing and repulsive.[192] From one point of view they were reformers; from another, hypocrites; and from yet a third, both.

Note, for example, Theodore Roosevelt's description of the moral compartmentalisation of Woodrow Wilson, the father of the principle of 'self-determination:'[193]

> [Wilson and people of his ilk] keep portions of their conscience in separate watertight compartments. They wish one compartment in which they stow all the phrases about 'absolute self-determination for all peoples.' In a totally different compartment they stow the actual facts of the treatment of those peoples, which . . . are in the event found unfit for self-determination. They love the fine language; they know it cannot be translated into fact; and so they applaud hypocritical promises, and cynical

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[191] S Pinker *The better angels of our nature: Why violence has declined* (2011) 658.

[192] See E Borgwardt, '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 545. On Roosevelt's co-signatory to the Atlantic Charter, prime minister Winston Churchill, see S Pinker *The better angels of our nature: Why violence has declined* (2011) 658; PG Lauren *The evolution of international human rights: Visions seen* (2003) 125. On Lord Robert Cecil, see George Egerton, "The Lloyd George Government and the Creation of the League of Nations," *The American Historical Review* 426 (1974): 419-444, 426, 423-424.

[193] E Morrison (ed) (1951) *The letters of Theodore Roosevelt* 1400 - 1401 as quoted in N Bhuta 'Justice without borders? Prosecuting General Pinochet' (1999) 23 *Melbourne University Law Review* 500 n6.

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> repudiation of promises. To propose in any real sense to give African savages more than a consultative and subordinate share in their own affairs is, at present, simply silly.[194]

Of course, Wilson was not alone in doing all he could at the Paris Peace Conference to thwart the Japanese proposal for a racial equality clause in the Covenant of the League of

[194] Roosevelt continued: 'Yet, there are any number of people, including Wilson very often, and Lloyd George not infrequently, who like to use language which means this or nothing. In the same way at this moment the United States has deprived and is depriving Haiti and Santa Domingo of self-determination. It has destroyed democracy in these two little festering black republics. It is ruling them by marines, and you don't find, and no-one else can find, a published word from . . . President [Wilson] even relating to what has been done.' *Ibid*.

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Nations.[195] Delegates from Australia[196] and Britain,[197] opines Lauren, 'shared the same attitudes about racial distinction, exclusion, and separation.'[198]

However, while it is true that Wilson had a record of supporting immigration exclusion against the 'Yellow peril' abroad, and racial segregation within the United

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[195] PG Lauren *The evolution of international human rights: Visions seen* (2003) 99. Apart from his personal prejudices regarding race, Wilson was also cognisant of the consequences of racial discrimination in United States politics. Harold Nicholson, a member of the British delegation, later wrote: Wilson 'found himself in a grave difficulty.' Any statement about racial equality, as proposed by the Japanese, introduced into the Covenant of the League of Nations 'implied equality of the yellow man with the white man,' and this, in turn, 'might even imply the terrific theory of the white man with the black.' Should this have occurred, opined Nicholson, 'no American Senate would ever dream of ratifying any Covenant which enshrined so dangerous a principle.' PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 84. Mazower also expounds upon the considerable anti-Asian feelings among many of the English-speaking delegates at the Paris Peace Conference.The Immigration Act of 1910 in Canada had denied entry to immigrants 'belonging to any race deemed unsuited to the climate or requirements' of the country. In New Zealand, politicians called for preventing the country being deluged with 'Asiatic Tartars.' Perhaps most virulently ant-Asian of all was Australia with its 'White Australia' policy. In California, anti-Japanese campaigns ran in the press, and an Asian Exclusion League was formed. In 1913, the Californian Alien Land Act had specifically targeted Japanese immigrants and restricted their property rights. M Mazower *Governing the world: The history of an idea* (2012) 163.

[196] The Australian Prime Minister, William Hughes, had long supported immigration quotas in his country, refused to compromise with Asians in diplomatic negotiations, and unhesitatingly proclaimed his belief in white supremacy. His strident campaign platform included the statement: 'Our chief plank, is of course, White Australia. There's no compromise about *that*. Industrious coloured brother has to go - and remain away!' He threatened that, should the Covenant contain any provision on racial equality, his government would refuse to joint the League. When Baron Makino introduced Japan's proposal in the League of Nations Commission on 13 February, Hughes reacted, in the words of one official, with 'instant and desperate opposition.' With his policy of 'Slap the Jap,' Hughes publicly insisted that he would not 'deviate an inch' from his position.' He declared: 'It would be unacceptable, no matter how drafted, for it strikes at the root of a policy vital to the existence and ideals of Australia.' As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 99 (Hughes' emphasis) and PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 84. The Prime Minister of New Zealand expressed a similar attitude. He received support from such newspapers as the *Otago Witness* that printed the opinion that, [t]hough the American Declaration of Independence begins by asserting all men are born equal in the site of God, it makes no mention of niggers and Japanese.' As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 99.

[197] Lord Robert Cecil stated that, with reference to *any* Japanese proposal on racial equality, 'the British would not agree to it at all, probably not in any form.' Indeed, before the issue came to a vote in the League of Nations Commission, Cecil received instructions to support the Dominions and to place the British vote squarely against Japan. Britain also submitted to other delegations legal arguments explaining why different state and races could not be considered equal. PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 88, 89. Lord Balfour, the British Foreign Secretary, stated in private conversation with Colonel House (recorded by another member of the United States delegation) that the proposition from the United States Declaration of Independence that all men are created equal was 'an eighteenth century proposition' which he did not believe to be true. Balfour expressed that he believed it was true in a certain sense that all men of a particular nation were created equal, but most certainly 'not that a man in Central Africa was created equal to a European.' As quoted in *Ibid* 84, 88.

[198] *Ibid* 84.

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States,[199] Theodore Roosevelt, in showing up his political rival, was not aware - or chose to ignore - the mote in his own eye.

Lauren believes that Roosevelt viewed imperialism as necessitating racial war.[200] Roosevelt lashed out at those who would apply the 'rules of international morality' to 'savages' and 'beasts,' asserting that such critics failed 'to understand the race-importance of the work which is done by their . . . brethren in wild and distant lands.'[201] He argued:[202]

> The most ultimately righteous of all wars is a war with savages, though it is apt to be also the most terrible and inhuman. The rude, fierce settler who drives the savage from the land lays all civilized mankind under a debt to him. American and Indian, Boer and Zulu, Cossack and Tartar, New Zealander and Maori - in each case the victor, horrible though many of his deed are, has laid deep the foundations for the future greatness of a mighty people.

'It is of incalculable importance,' Roosevelt concluded, that lands 'should pass out of the hands of their red, black, and yellow aboriginal owners, and become the heritage of the dominant world races.'[203]

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[199] PG Lauren *The evolution of international human rights: Visions seen* (2003) 99. Lauren records that, several years prior to the Paris Peace Conference, Wilson had written on the question of Asian immigration: 'I stand for the national policy of exclusion. We cannot make a homogenous population out of a people who do not blend with the Caucasian race. Oriental coolieism will give us another race problem to solve and surely we have had our lesson.' This statement is revealing, not only with regard to Wilson's attitude towards Asian people, but also with regard to blacks. Although Wilson was approached on numerous occasions by blacks for assistance in fighting discrimination and enacting anti-lynching laws, Wilson did little to help. In fact, it was Wilson, a Southerner, who first introduced segregation within departments of the federal government itself. When a group of black representatives approached him in protest, he stated: 'Segregation is not humiliating, but a benefit, and should be so regarded by you gentlemen.' PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 83. Pinker also points out that Wilson was a white supremacist who kept black students out of Princeton when he was president of the university, praised the Ku Klux Klan, cleansed the federal government of black employees, and said of ethnic immigrants, 'Any man who carries a hyphen about with him carries a dagger that he is ready to plunge into the vitals of this Republic whenever he gets ready.' JW Loewen *Lies my teacher told me: Everything your American history textbook got wrong* (1995) 22 - 31 as quoted in S Pinker *The better angels of our nature: Why violence has declined* (2011) 658.

[200] PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 62.

[201] Pinker notes that the 'progressive' president, Theodore Roosevelt, wrote that the decimation of Native Americans was necessary to prevent the continent from becoming a 'game preserve for squalid savages,' and that in nine out of ten cases, 'the only good Indians are the dead Indians.' DT Courtwright *Violent land: Single men and social disorder from the frontier to the inner city* (1996) 109 as quoted in S Pinker *The better angels of our nature: Why violence has declined* (2011) 658.

[202] As quoted in PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 62.

[203] As quoted in *Ibid*.

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During the Second World War, Franklin Roosevelt often expressed his distaste for colonialism.[204] In fact, the Roosevelt Administration brought considerable pressure to bear on the United Kingdom to dismantle her colonial empire. However, as one of his biographers, Warren Kimball, points out, Roosevelt did not propagate self-government for *all* colonial territories. Roosevelt's anti-colonialism was largely directed at securing independence for India (which he regarded as nearly suited for independence) and Indochina (which first required a period of education and training and the creation of suitable internal policy structures).[205]

Roosevelt shared the generally prevailing Western view of the time that much of the colonial world was not ready for self-rule, and that immediate post-war independence for many colonies would only lead to widespread disorder and conflict.[206] Roosevelt's anti-colonialism, comments one of his biographers, came with ethnocentrism, distasteful racial notions, the burdens of paternalism, belief in white and Western superiority, cultural bias, and ignorance.[207] He relegated sub-Saharan Africa to that group of societies that were not ready for even rudimentary forms of self-government.[208]

On the other side of the Atlantic, the young Winston Churchill wrote of taking part in 'a lot of jolly little wars against barbarous peoples' in the British Empire.[209] Churchill also

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[204] Kimball notes that, whatever Roosevelt's personal distaste for colonialism on moral and humanitarian grounds, it was his fear that it would disrupt any peace settlement that motivated his actions during the war. WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 128.

[205] *Ibid* 130.

[206] *Ibid*.

[207] *Ibid*.

[208] For example, speaking to a group of black publishers about Gambia, a small British colony in West Africa, Roosevelt displayed both his belief in the evils of colonialism and his paternalism and belief in Western superiority: 'It's the most horrible thing I have seen in my life . . . The natives are five thousand years back of us . . . The British have been there for two hundred years - for every dollar that the British have put into Gambia, they have taken out ten. It's just plain exploitation of those people . . . Those people, of course, they are completely incapable of self-government. You have got to give them some education first. Then you have got to better their economic position . . .' As quoted in *Ibid* 144 - 145.

[209] In one of those 'jolly little wars,' Churchill wrote, 'we proceeded systematically, village by village, and we destroyed the houses, filled up the wells, blew down the towers, cut down the shady trees, burned the crops and broke the reservoirs in punitive devastation.' Churchill defended these atrocities on the grounds that 'the Aryan stock is bound to triumph,' and he said he was 'strongly in favor of using poisoned gas against uncivilized tribes.' See generally R Toye *Churchill's empire: The world that made him and the world he made* (2010); quotes excerpted in J Hari 'The two Churchills' *The New York Times* 12 August 2010 as quoted in S Pinker *The better angels of our nature: Why violence has declined* (2011) 658.

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believed the Asian races to be inferior.[210] 'Why be apologetic about Anglo-Saxon superiority?' stated Churchill, 'We are superior.'[211]

When asked whether the principles professed in the Atlantic Charter relating to the right of self-determination also applied to those in the colonies sacrificing on behalf of the war effort, Churchill quickly made clear that the British were not making any commitments concerning policies in the colonial territories.[212] He declared, in a widely quoted response: 'We mean to hold our own. I have not become the King's First Minister to preside over the liquidation of the British Empire.'[213] He emphatically despised Gandhi. 'Gandhism and all its stands for, Churchill declared, 'must ultimately be grappled with and finally crushed.'[214]

Pinker comments that, today we are stunned by the compartmentalised morality of these men, who in many ways were enlightened and humane when it came to their own race. Yet they never took the mental leap that would have encouraged them to treat the people of other races with the same consideration.[215]

3. The Janus face of Smuts

A vastly under-explored case study in understanding the complex framework of international law is the visionary and controversial South African, Jan Christian Smuts (1870 - 1950): on the one hand, one of the principal authors of the Covenant of the League of Nations, and the person directly responsible for the recognition of human rights as a

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[210] RJ Vincent 'Racial equality' in H Bull & A Watson (eds) *The expansion of international society* (1984) 240. He blamed the people of India for a famine caused by British mismanagement because they kept 'breeding like rabbits,' adding, 'I hate Indians. They are a beastly people with a beastly religion.' See generally R Toye *Churchill's empire: The world that made him and the world he made* (2010); quotes excerpted in J Hari 'The two Churchills' *The New York Times* 12 August 2010 as quoted in S Pinker *The better angels of our nature: Why violence has declined* (2011) 658.

[211] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 144.

[212] PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 4.

[213] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 144.

[214] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 125. Schwarz states that Churchill 'could barely constrain himself when he came to consider Gandhi, either deriding him in public, or jesting in private, saying that 'Gandhi should be bound hand and foot at the gates of Delhi and trampled on by an enormous elephant ridden by the viceroy.' As quoted in B Schwarz *Memories of empire volume 1: The white man's world* (2011) 307 n99. Churchill reacted fervidly to what he described as: '[T]he nauseating and humiliating spectacle of this one-time Inner Temple lawyer, now seditious fakir, striking half-naked up the steps of the Viceroy's Palace, there to negotiate and parlay on equal terms with the representative of the King-Emperor. As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 125.

[215] S Pinker *The better angels of our nature: Why violence has declined* (2011) 658.

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founding value of the Charter of the United Nations, and on the other, the premier of racially segregated South Africa.

Although the scope of this thesis is limited to Smuts' involvement in both of the major efforts during the 20th century to achieve the goal of world peace through a general international organisation of states, of Smuts' many other accomplishments there cannot be any doubt: A Field Marshal in the British army, a creator of the Royal Air Force, a member of the British War Cabinet in both world wars, twice Prime Minister of South Africa, a principal architect of the inter-war British Commonwealth, and Chancellor of Cambridge University.[216] Jurist, scientist, soldier, politician, international statesman, philosopher - Smuts had a wholly exceptional range of talents and experiences.[217] This introductory chapter concludes with a brief personal history of Smuts.

One of the factors that renders Smuts such a fascinating case study of duality, is that his character was highly complex. He was a living web of contradictions. One gets a sense of this duality in Smuts from the introductory remarks of Dean Adams, Chancellor of the University of California, on the occasion of that institution conferring an honorary doctorate upon Smuts on 4 May 1945:[218]

> General Smuts is a practical idealist and martial metaphysician, applying Holism to the affairs of men and nations . . . a modernist with an historical sense and one of the earliest and ablest architects of a new international order.

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[216] Schwarz writes: 'This was a career which could create its own myths.' Shortly after Smuts' death, 'with due filial hyperbole,' his son claimed: 'There is, in fact, very little in South Africa that did not spring from his fertile brain.' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 283. In eulogising Smuts in 1950, the Round Table also stated: 'In the long history of nations and personalities, it would be difficult to choose any country in whose constructive development a single individual had played so large and dominant a part as that that performed by General Smuts in the years before and after Union.' 'Jan Christiaan Smuts: The Roundtable's oldest friend' (1950) 161 *The Round Table* 16.

[217] R Hyam 'South Africa, Cambridge, and Commonwealth history' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 404.

[218] This information is set forth in the papers of David Friedmann, former Chief Editor of the South African Press Association. Mr. Friedmann, who was stationed in London during the Second World War, regularly interviewed Smuts during the latter's war-time visits to London. On 24 May 1988, Friedmann presented his collection of papers, reports, and photographs regarding Smuts to the Smuts Memorial Trust (the '*Friedmann Papers*'). The General Smuts Foundation graciously granted the author access to Smuts' library (the content of which is not generally accessible by the public) at his home, Doornkloof, near Irene, where the *Friedmann Papers* are housed in Smuts' desk. Copies of relevant portions of the *Friedmann Papers* are on file with the author.

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Smuts was fascinated by the duality in human nature, despite the universe's constant striving for 'wholeness.' 'To me Paul remains something of a enigma,' Smuts stated in 1941:[219]

> [A] hard-boiled Pharisee trained to all the Old Testament literalism of the pukka Jew; and yet a mystic of mystics, who . . . saw deeper into the heart of religion than any other religious thinker . . . his spiritual insight pierced down to a very fundamental truth which my blindness cannot see.

In 1942, Smuts wrote:[220]

> We are curious mixtures in which the high and the low curiously blend, and we deceive ourselves if we put it all to the credit of our virtue and other good qualities. There is a good deal of the devil also in it. There is an elemental drive which will not give in to opposition and which sometimes uses the same weapons with which the opponents fight.

In the wake of the 1948 election, Smuts stated that South Africa remained 'a country of a divided soul.'[221] 'Faust's two souls inhabited this good fine beloved people.'[222] Smuts recognised this duality also in himself: 'But in a sense I am, we all are, possessed of these two souls . . .'[223]

Some of Smuts' ideas about the structure and functioning of international organisations were visionary. However, Smuts was not only a man *before* his time, he was also a man *of* his time. Like his contemporaries mentioned above, Smuts encapsulated in

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[219] Smuts to MC Gillett 29 October 1941 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 326.

[220] Smuts to MC Gillett 10 March 1942 in *Ibid* 358.

[221] Smuts to MC Gillett 20 July 1948 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 218.

[222] *Ibid*.

[223] *Ibid*. In November of 1945, with reference to a comparison drawn by Margaret Gillett between Smuts and 'Grey Cardinal Eminence,' Smuts stated: '[O]ne never knows oneself. I am certain that you know me much better than I know myself, and I continue a painful puzzle to myself. But Grey Eminence, as depicted by Huxley, was the most glaring case of dual personality one has read about . . . In me it is not a case of dual personality, but of that battle within the one personality or soul, which St Paul has painted with such fidelity and insight in *Romans vii*. It is the warfare in the soul, and not between two souls, that is mine.' However, unlike Paul, Smuts remained 'self-defeated,' whereas Paul emerged 'victorious, with a faith which has guided the yearning soul of our civilization these two thousand years.' Smuts continued: 'My vision of holism, of the soul that is whole, of the personality that is completely integrated, is derived from that inner consciousness of struggle which is always with me and still remains unachieved. O miserable sinner that I am!' Smuts to MC Gillett 2 November 1945 in *Ibid* 18.

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his person the vastly divergent and often contradictory impulses of his era: the tension between his idealistic vision and what he considered to be the dictates of pragmatism.[224]

On the domestic scene, the duality in Smuts is exemplified by his interaction with the African National Congress ('ANC') in the early 1940s. Dr AB Xuma was elected president of the ANC in December 1940. He commenced his presidential address on 14 December 1941 with an approving reference to Smuts:[225]

> If you may ever need comfort, courage and inspiration for the difficult yet manly task I am going to urge you assume, I advise you to pin on the walls of your hearts the wise words of our Prime Minister, the Right Honourable Field Marshal JC Smuts who said recently, 'Do not mind being called agitators. Let them call you any names they like but get on with the job and see that matters that vitally require attention, Native Health, Native Food, the treatment of Native Children and all those cognate questions that are basic to the Welfare of South Africa are attended to.'

In December of 1943, the ANC's annual conference adopted a document entitled, *Africans' claims in South Africa,* partly in response to the Atlantic Charter and rising African nationalism, and the growing aversion to discrimination around the world.[226] Xuma, in his preface, had counselled against discouragement by quoting the 'wise and encouraging words of Smuts' referred to above, to the irritation of some ANC members.

Although the document was proudly received by Africans, its reception by Smuts left them discouraged and embittered. In September of 1944, Xuma sent Smuts a copy of *Africans' claims* together with a request for an interview. Smuts replied through his private secretary, who wrote that the document was 'propagandist,' and that Smuts 'was not prepared to discuss proposals which are wildly impracticable.'[227]

In *Long walk to freedom*, Nelson Mandela recounts how, as a young undergraduate student at Fort Hare, he attended a speech by Smuts when the latter visited the campus. He found Smuts generally to be a sympathetic figure. Yet, Mandela remained acutely

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[224] Mazower refers to Smuts as the 'most realistic of idealists,' when Smuts 'threw his weight behind the League idea and argued publicly through 1917 that military victory must be followed by "moral victory," if "military imperialism" – something that "has drifted from the past like a monstrous iceberg into our modern life" – was to be replaced by a peaceful era of international harmony.' M Mazower *Governing the world: The history of an idea* (2012) 346, citing JC Smuts *The League of Nations: A practical suggestion* (1918) vi.

[225] Presidential address by AB Xuma (14 December 1941) http://www.anc.org.za/show.php?id=9358 (accessed 18 March 2015).

[226] T Karis *Hope and challenge: 1935 - 1952 vol 2* (1973) 89 - 90 as part of T Karis and GM Carter (eds) *From protest to challenge: A documentary history of African politics in South Africa 1882 - 1964.*

[227] As quoted in *Ibid.*

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cognisant of the fact that Smuts 'had helped found the League of Nations, promoting freedom around the world,' while at the same time '[repressing] freedom at home.'[228]

'I am suspected of being a hypocrite,' Smuts himself wrote at a later stage, 'because I can be quoted on both sides. The Preamble of the Charter is my own work, and I also mean to protect the European position in a world which is tending the other way.'[229]

Smuts' case perhaps represents the epitome of the phenomenon described above. He can be seen as one of the leading architects of the global human rights system. However, at the same time, his ideas about racial superiority in the context of the supremacy of Western civilisation[230] and his propensity to use force[231] when he considered state security to be threatened, cannot be denied. In essence, Smuts was a proponent of the two moral opposites of the last century: human rights *and* racial segregation.

Until recently, many authors addressing the history of the international system, have responded to this conundrum by largely, or even completely, omitting any reference to Smuts from the picture they present.[232] This blind spot may be understandable from a political and activist point of view, but a failure to engage with the complexities and ambiguities present at the very origins of the current world system and of international law, represents a serious scholarly shortcoming.

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[228] N Mandela *Long walk to freedom* (2000) 41.

[229] Smuts to MC Gillett 14 January 1947, as cited in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 450.

[230] B Friedman *Smuts: A reappraisal* (1976); K Ingham *Jan Christian Smuts: The conscience of a South African* (1986).

[231] On the Bulhoek massacre, the Rand rebellion of 1922, and the Bondelswartz affair, see WK Hancock *Smuts: The fields of force* (1968) 62 - 110.

[232] For example, Smuts is only briefly mentioned with regard to his role in drafting the Preamble to the Charter in R Wolfrum 'Preamble' in B Simma (ed) *The Charter of the United Nations: A commentary* (1994) 45-48, 45, while there is no reference to his contribution to the Preamble in P Kennedy *The parliament of man* (2006). Kennedy does briefly mention Smuts as one of the individuals who drafted schemes for the League of Nations. *Ibid* 8. There is also no mention of Smuts' role in drafting the Preamble in E Luard *A history of the United Nations volume 1: The years of Western domination, 1945 – 1955* (1982); R Normand & S Zaidi *Human rights at the UN: The political history of an idea* (2008); M Waters *The United Nations: International organization and administration* (1967); R Jolly, L Emmerij & T Weiss, *UN ideas that changed the world* (2009); H von Mangold & V Rittberger (eds) *The United Nations system and its predecessors volume I: The United Nations system* (1997); B Broms, *The United Nations* (1990); H Hannum 'Human rights in C Joyner (ed) *The United Nations and international law* (1997); LM Goodrich, 'From League of Nations to United Nations' (1947) 1 *International Organization* 3 – 21; K Cmiel 'The recent history of human rights (2004) 109 *The American Historical Review* 117 – 135; J Krasno, 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 1 – 35; EJ Hughes, 'Winston Churchill and the formation of the United Nations Organization' (1947) 9 *Journal of Contemporary History* 177 – 194.

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Much is to be gained by the scientific community delving deeper, and more perceptively, into the ideological basis of the world that we live in today. This thesis contends that the contradictions inherent in Smuts, in many ways represent the contradictions in the international system itself.

A number of recent studies by historians, political scientists, and others (Saul Dubow (2008), Mark Mazower (2009), Bill Schwarz (2011), Joseph Kochanek (2012), and Jeanne Morefield (2014)) have started to critically engage with the perplexing task of what to make of Smuts' central role in shaping the foundational values of the modern world.[233] Christof Heyns (1995) has also started to address Smuts' legacy in the arena of international human rights law.[234]

It is in the emerging tradition of critical consideration of Smuts' legacy, especially as far as his impact on the legal basis of the United Nations and of international human rights is concerned, that this thesis attempts to advance the inquiry.

Of course, in approaching this complex subject, much depends on one's chosen temporal point of departure. If one looks at the past purely from the perspective of the present, in an *ex post facto* way, there is indeed a strong incentive to simply dismiss a set of facts such as those presented by Smuts as an aberration or an exception; a kind of individualised schizophrenia that is of little significance to the larger picture.

Sir Louis Blom-Cooper QC warns of the 'hazard of judging human conduct from afar.'[235] He states:[236]

> Time, so far as we know, flows only in one direction, and despite our recognition of the seductive appeal of hindsight, we are prone to give it prominence. The significance of events under scrutiny, especially when viewed through that most accurate of diagnostic instruments, the 'retrospectivescope,' are far removed from the hectic, demanding, and fleeting days as they were lived.

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[233] See S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 45 - 74; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009); G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 968 - 986; B Schwarz,*Memories of empire volume 1: The white man's world* (2011); J Kochanek 'Jan Smuts: Metaphysics and the League of Nations' (2012) 39 *History of European Ideas* 267-286; J Morefield, *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014).

[234] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 329 - 348.

[235] Sir L Blom-Cooper QC 'Jan Christiaan Smuts (1870 – 1950): Middle Templar extraordinary' 26(2) *Advocate* 42.

[236] *Ibid*.

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Another approach is to assess historical figures *ex ante* - purely within the context of their time. The true question then becomes: How did they respond to the challenges of *their* time, by the best light available to them? Following this approach, the focus would be to evaluate Smuts' contribution to international institutions and international law without the benefit of our current understanding of 'human rights' as they have been developing since 1945 through the various international an regional human rights instruments and practices – in short, without the benefit of hindsight. The *rationale* for this approach is best captured by the American historian, Barbara W. Tuchman:[237]

> In order to identify with the period it is . . . essential to eliminate hindsight . . . To understand the choices open to people of another time, one must limit oneself to what they knew; see the past in its own clothes, as it were, not in ours.

Of course, this approach runs the risk of losing all critical perspective, and thus degenerating into mere hagiography of historical figures, such as Smuts. It loses sight of George Santayana's famous admonition: 'Those who cannot remember the past are condemned to repeat it.'[238]

Working exclusively from either perspective leads to results that are, at best, questionable, and, at worst, outright unconvincing. The *ex post* fact approach ignores the actual physical, ideological, and moral constraints that historical figures faced. This leads to few, if any, standing up to scrutiny. As Margaret MacMillan reminds us, we should indeed be wary of those who claim to have uncovered the truth once and for all.[239] The reality is that global values can, and do, change constantly. The future will undoubtedly reveal the contradictions and blind spots of the present age, of which we may be only dimly aware at the moment, if at all.

The *ex ante* approach, on the other hand, ignores the fact that time marches on, and exposes as untenable positions that were once taken with great conviction. The British literary critic, John Carey said: 'One of history's most useful tasks is to bring home to us how keenly, honestly, and painfully, past generations pursued aims that now seem to us wrong or disgraceful.'[240]

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[237] BW Tuchman *Practicing history: Selected essays by Barbara W. Tuchman* (1981) 75.

[238] As quoted in M MacMillan *The uses and abuses of history* (2008) 163.

[239] M MacMillan *The uses and abuses of history* (2008) 187.

[240] As quoted in *Ibid* 186.

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We have to accept that in history, as in our own lives, very little is absolutely black or absolutely white.[241] It is thus in the tension field between these equally valid, yet often contradictory, perspectives that this thesis undertakes the arduous task of re-evaluating Smuts' contribution to international law and international organisation through the prism of the Janus face in both the man and the institutions that he helped to create.[242] The aim is neither to venerate nor to denigrate Smuts, but rather, through a critical study of the actions and legacy of this complex personality, to gain a better understanding of the way in which the modern international system functions.

4. A brief personal history of Smuts[243]

Jan Christian Smuts (1870 – 1950) was born on 24 May 1870, on a farm near the hamlet of Riebeek-West near Cape Town, in what was then the Cape Colony, to a fairly well-to-do Afrikaner family. Smuts went to school for the first time aged 12, when his older brother, who was to be the family's educated son, died. At the small-town school in Riebeek-West, Smuts soon exhibited prodigious intellectual gifts.

Smuts entered Victoria College (later the University of Stellenbosch) in 1886 at the age of 16. In 1891, he graduated with first class honours in literature and science. Smuts won the Ebden Scholarship to study law at Cambridge University.

At Cambridge, he completed both parts of the Law Tripos examination simultaneously, and gained a double first. Towards the end of his career, in 1948, Smuts was installed as Chancellor of Cambridge, the first foreigner to hold the position.

Smuts' respect for England and its civilisation deepened when he was a student at Cambridge, and upon his return to South Africa, Smuts became an ardent follower of Cecil John Rhodes. Smuts' own retrospective memory was that it was the Jameson raid which

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[241] M MacMillan *Ibid* 45.

[242] The author is grateful to Professor Christof Heyns for the insight regarding the simultaneous validity of these two perspectives.

[243] The following account is based, in part, on a forthcoming journal article by the author of this thesis and Christof Heyns, preliminarily entitled '"To Save Succeeding Generations from the Scourge of War": Jan Smuts and the foundations of United Nations.' It draws on WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962), WK Hancock *Smuts: The fields of force*, SG Millin *General Smuts (two volumes)* (1936), JC Smuts *Jan Christian Smuts: A biography* (1952), FS Crafford *Jan Smuts: A biography* (1946), A Lentin, *Makers of the Modern World (The Peace Conferences of 1919 - 23 and Their Aftermath): General Smuts – South Africa* (2010), and R Steyn *Jan Smuts: Unafraid of greatness* (2015).

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shattered his loyalty to Rhodes and to the Empire. 'It was *the* disaster,' Smuts wrote to one of his biographers, Sara Gertrude Millin, in 1932.[244]

By the late 1890s, Smuts had become incensed by what Bill Schwarz terms the 'free-booting capitalist adventurism of the leading British imperialists - Rhodes, Milner, and . . . Chamberlain were his villains.'[245]

After leaving the Cape Colony in the wake of the Jameson raid, Smuts became the state attorney of the Transvaal Republic at the age of 28. Soon, he found himself in the position of President Paul Kruger's right-hand man. Smuts accompanied Kruger to Bloemfontein in August of 1899 to negotiate with Sir Alfred Milner, British High Commissioner for South Africa, in a last-ditch effort to avoid imminent war, as a result of what Kruger and Smuts viewed as an attempt by Great Britain to annex the gold fields of the Transvaal.

Smuts expressed the full pitch of his anger in a pamphlet - *A century of wrong* - written on the eve of the Boer War. He fiercely denunciated British imperialism.[246] Smuts also authored, in all likelihood, the ultimatum that was sent to the British Government on 9 October 1899.[247] Two days later the first salvos in the Anglo-Boer War were fired.

The Boer forces of the Transvaal and the Republic of the Orange Free State were eventually vastly outnumbered by the British. Pretoria fell in June of 1900, and President Kruger went abroad. Though nominally only State Attorney, Smuts found himself in sole charge of the collapsing government of the Transvaal.

In the second half of 1900, Smuts took to the veld as a soldier under General JH de la Rey, and, later that year, took command in the Western Transvaal, fighting a successful guerrilla campaign in the Gatsrand. At the end of July of 1901, Smuts left the Transvaal and entered the Orange Free State, then he crossed the Orange River into the Cape Colony, and subsequently campaigned there for eight months.

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[244] Smuts to SG Millin 13 September 1932 in in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 521.

[245] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 280, 281.

[246] *Ibid*.

[247] The author of the Boer ultimatum was not disclosed, but Hancock notes that the tone of the ultimatum was so similar to that of a memorandum that Smuts had prepared on 4 September 1899, as to suggest that the drafting in large measure was his. WK Hancock, *Smuts: The sanguine years 1870 - 1919* (1962) 106n.

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An enduring image from the Anglo-Boer War is Smuts' retrieval of a copy of Immanuel Kant's *Critique of Pure Reason* from the ruins of a burnt-out farmhouse, and keeping it in his saddlebag during the course of the war, together with, at various times, Cicero, an English Bible, a volume of Schiller, and a Greek New Testament.[248]

At the peace conference of Vereeniging in 1902, Smuts supported the view that it would be better to negotiate an orderly peace, rather than be crushed later and have harsh terms thrust upon the Boers. During the war, 22 000 Empire troops[249] and more than 7 000 Boer soldiers had died,[250] as well as an estimated 18 000 - 28 000 civilians[251] and an unknown number of the 107 000 Africans in concentration camps[252] had perished. The war had devastated the young Republics, and antagonism between Boer and British descendants remained for many decades a major component of political life in South Africa.

In 1906, on a trip to London, Smuts convinced the Liberal British Prime Minister, Sir Henry Campbell-Bannerman, to grant self-government to the defeated Boer Republics within the British Empire.[253] The imperialism of Joseph Chamberlain and Alfred Milner, Smuts believed, had come to an end with that magnanimous gesture.

This act of magnanimity on the part of Great Britain became the cornerstone of Smuts' statecraft,[254] and formed the basis for his collaboration with his erstwhile enemy

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[248] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 30; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 14.

[249] 5 744 killed by enemy action, and 16 168 died of wounds or disease. T Pakenham *The Boer War* (1979) 287.

[250] *Ibid*.

[251] *Ibid*.

[252] According to Pakenham, the incomplete records give the total as 7 000, but it probably exceeds 12 000. The number of deaths among the approximately 50,000 Africans on the British side is not known. *Ibid*.

[253] Beyond his highest expectations, Smuts found in Campbell-Bannerman a receptive audience. One evening in Downing Street, Smuts put a simple case to the Prime Minister, which, in substance, was: 'Do you want friends or do you want enemies? You can have the Boers for friends, and they have proved what quality their friendship may mean. I pledge the friendship of my colleagues and myself if you wish it. You can choose to make them enemies, and possibly have another Ireland on your hands. If you do believe in liberty, it is also their faith and their religion.' Smuts avoided set arguments, but spoke to Campbell-Bannerman 'man to man' and 'appealed only to the human aspect,' which Smuts knew would weigh heavily with him. Although the 'cautious Scot' did not say anything to him, Smuts recounted leaving that room 'a happy man': 'My intuition told me the thing had been done.' JC Smuts Article (1948) in J van der Poel (ed) *Selections from the Smuts Papers Volume VII August 1945 – October 1950 (*1973) 182.

[254] This history has a strong resonance in the later reconciliatory approach of Nelson Mandela, Desmond Tutu and other leaders of their generation.

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and his belief that self-government was not necessarily incompatible with membership in a larger world body. When Milner's tenure as High Commissioner in South Africa came to an end in April of 1905, Smuts wrote to him, in a letter of farewell: 'History writes the word "Reconciliation" over all quarrels . . .'[255]

Upon the granting of responsible government to the Transvaal in December of 1906, General Louis Botha became Prime Minister, and Smuts became Colonial Secretary and Minister of Education. However, a larger unity still promised in South Africa: Smuts became a driving force behind the unification of the four provinces - the Cape Colony, the Transvaal, Natal, and the Orange Free State - into the Union of South Africa in 1910.

At the outbreak of the First World War in 1914, Botha and Smuts sided with the Allied powers. Almost at once a section of the Afrikaner population took up arms in rebellion. Because Great Britain had granted the Union self-government, Botha and Smuts felt morally bound to support her. They crushed the rebellion, and Smuts and Botha led the Union Defence Force into German South West Africa and conquered the territory on behalf of the Allies. In 1916, Smuts was appointed Lieutenant-General in the British Army, and he became the theatre commander in German East Africa.

In March of 1917, Smuts travelled to England as Botha's substitute on the Imperial War Cabinet. As set forth in greater detail below, Prime Minister Lloyd George prevailed upon Smuts to remain in England, and to join the War Cabinet proper - the Prime Minister's inner cabinet and the supreme executive body in the waging of the war. Based upon his varied and valuable service, Smuts became known as the 'Handyman of the Empire.'

In response to London's vulnerability to German air raids, Smuts recommended not only a variety of measures to protect the capital, but also the establishment of the Royal Air Force as an independent branch of the armed services. As described below, in 1918 Smuts wrote the document that became highly influential in the founding of the League of Nations.

When Botha died in 1919, Smuts became Prime Minister of the Union of the South Africa until his electoral defeat to General JBM Hertzog in 1924. Elections among the all-white electorate were hotly contested. Smuts was Leader of the Opposition in the Union Parliament until 1933, when Smuts and Hertzog merged their political parties. Smuts then

[255] As quoted in O Geyser *Jan Smuts and his international contemporaries* (2001) 44.

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served as Deputy Prime Minister under Hertzog until 1939, when he became Prime Minister for a second time.

As Deputy Prime Minister in Herzog's fusion government, Smuts has been criticised, in particular, for his acquiescence in the Native Affairs Act of 1936. This legislation, among other things, disenfranchised Cape Africans who, hitherto, had the vote.[256]

During Smuts' first premiership, in May of 1921, Smuts had to defend his government over its handling of the occupation of common land in the Bulhoek area near Queenstown by a sect of a black African separatist church called the Israelites. A clash between approximately 500 members of the sect and police resulted in the death or injury of 300 sect members. Political opponents accused Smuts of vacillation and indecision that had only emboldened the Israelites, rather than defusing the tension.

Smuts' political opponents also accused him of *platskiet-politiek* (shoot-down politics) when, in early 1922, the Administrator of South West Africa, over which South Africa held the mandate under the Covenant of the League of Nations, suppressed a rebellion of the Bondelswartz tribe employing bombs and airplanes, resulting in the death of 115 tribe members, including women and children.[257]

Two particularly controversial domestic incidents stand out. Firstly, Smuts did not grant clemency to one of the 1914 rebel leaders, Jopie Fourie, who was executed. Afrikaner nationalists held this act against him to the end of his life.[258]

Secondly, in early January of 1922, white mine workers on the Rand went on strike. Smuts called for the mines to re-open on 12 February, whereupon clashes between strike commandoes and the police ensued. Acts of violence by the striking workers across the Rand followed. Smuts called up the Active Citizen Force and declared martial law. He personally took command and, after three days of heavy fighting - including bombing from the air the striker's headquarters in Fordsburg - suppressed the revolt with heavy casualties on both sides.[259]

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[256] T Cameron, *Jan Smuts: An illustrated biography* (1994) 130 - 131.

[257] On the Bulhoek massacre and the Bondelswartz affair, see WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 89 - 110.

[258] On Jopie Fourie, see *Ibid* 88.

[259] On the Rand rebellion of 1922, see *Ibid* 62 – 88.

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Smuts was also the main antagonist of Mohandas Gandhi, who developed his model of passive resistance as a political weapon during the 21 years he spent in South Africa (1893 - 1914), in opposing political and social discrimination against the Indian population group in South Africa.[260] A significant element of Gandhi's approach was to expose the gap between the ideals that the South African, and by extension the British, governments claimed to adhere to, and the reality of actual practice.

Gandhi's cause was strictly confined to the plight of Indians; at the time he explicitly endorsed the inferior position to which Africans were relegated.[261] However, Gandhi demonstrated that white domination could be challenged, and his method of public demonstration would find resonance in the anti-apartheid movement. Later, in an essay that paid tribute to Gandhi, Smuts wrote that 'he had revealed a skeleton in our cupboard.'[262]

When Smuts lost the election to Hertzog in 1924, he found the opportunity to attend to other pursuits. As set forth below, during his student days at Cambridge, at the age of 24 and as a diversion from his law studies, Smuts wrote an unpublished thesis entitled *Walt Whitman - A study in personality*. In this study, Smuts concluded that the determining force of life, the coordinating principle of the universe, was an impulse towards wholeness - the merging of sub-units into a whole transcending in nature and in magnitude the sum of its parts. He called his theory the 'Idea of the Whole,' which would later become 'Holism,' coined from the Greek 'holos.'

In 1926, Smuts published his book entitled *Holism and evolution*.[263] Smuts' views on Holism should be understood in the context of his views on evolution. Charles Darwin, a fellow Christ's College alumnus, published *On the origin of species* in 1859. Darwin's ideas made an indelible impression on Smuts. Smuts accepted the logic of evolutionary theory.[264] Smuts' 'Idea of the Whole' was an elaboration of one of the factors in organic

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[260] CH Heyns 'A jurisprudential analysis of civil disobedience in South Africa' unpublished PhD thesis, University of Witwatersrand (1991) 87 *et seq*.

[261] During his time in South Africa, Gandhi said: 'About this mixing of the [Africans] with the Indians, I confess I feel most strongly.' And 'We believe also that the white race in South Africa must be the predominant race.' See M Swan *Gandhi: The South African* experience (1985) 112, 113, 133.

[262] JC Smuts 'Gandhi's political method' in JD Pohl Collection, University of Pretoria Archives at 2.

[263] JC Smuts *Holism and evolution* (1926).

[264] Evolution was the incremental progress and stratification of wholes, commencing with inorganic beginnings and developing to higher levels of spiritual creation. *Ibid*.

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change and human decent identified by Darwin. For Darwin, internal creative and external factors led to gradual changes in the hereditary structures and functions of organisms.

Smuts, however, placed greater emphasis on the ways in which organisms adapted to, and integrated with, their environment.[265] Thus, he strove to wrest the concept of evolution away from what he saw as the hard, scientific rendering which Darwin had initiated, in which competition and survival determined human life.[266]

In Smuts' famous phrase, 'the whole . . . is more than the sum of its parts.'[267] There was a formal unity between all cells, atoms and mind; they contained a creative force called Holism, the fundamental organising force of the universe.

The insight by Einstein - with whom Smuts corresponded - that space and time are rooted in experience, rather than prior to it, was key to Smuts' breaking out of the mechanist mould. In a mechanical understanding of the universe:[268]

> [L]ife is practically banished from its own domain, and its throne is occupied by a usurper. Biology thus becomes a subject province of physical science – the Kingdom of Beauty, the free artistic plastic Kingdom of the universe, is inappropriately placed under the iron rule of force.

Holism permeates atoms, cells and mind.

During a speech in the chapel of Christ's College on 21 October 1934, Smuts explained that Holism simply meant that, 'we are not alone, not mere individual atoms alone in this world.'[269] It was a message of optimism and elevation, in accordance with Smuts' fundamental belief that, ultimately, we live in a 'friendly universe.'[270]

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[265] *Ibid* 74.

[266] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 321.

[267] From Smuts' preface to the German edition of *Holism and evolution*, April 1938, as quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 161, 164 - 165.

[268] JC Smuts *Holism and evolution* (1926) 3, 4.

[269] Unpublished notes of an address by Smuts in the chapel of Christ's College, Cambridge, on Sunday 21 October 1934. In some respects Holism exhibits remarkable similarities with the concept in African humanism that sometimes finds expression in the term 'Ubuntu,' which emphasises our shared humanity - 'I am because we are.' 'Ubuntu' focuses on the whole rather than the parts, subjects the role of the individual to that of the group, and does not emphasise rights at the cost of duties. The two concepts also differ in significant respects. Holism, for example, is based upon, and presupposes, a robust evolutionary element that may not be present in 'Ubuntu.' For further reading on 'Ubuntu', see, for example, T Murithi, 'Practical peacemaking wisdom from Africa: Reflections on Ubuntu' (2006) 1 *The Journal of Pan-African Studies* 25 - 34. It is noteworthy that the concept of 'duty,' in addition to 'rights,' today enjoys the strongest recognition in the African Charter on Human and Peoples' Rights.

[270] JC Smuts *Holism and evolution* (1926) 218.

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As more fully set forth in Chapter 10 below, Smuts' philosophy of Holism underlies, and finds expression in, his work towards establishing the Union of South Africa, the League of Nations, and the United Nations.

Another important influence on Smuts, was his life-long exposure to English radicalism, pacifism and feminism.[271]

Shortly after the Second World War broke out on 1 September 1939, the Prime Minister, Hertzog, introduced a motion in Parliament in favour of neutrality. Smuts moved an amendment in favour of the Union joining the Commonwealth in declaring war on Germany. Smuts carried South Africa into war by a margin of thirteen votes, Hertzog resigned, and Smuts became Prime Minister once again.

As more fully expounded upon in Chapter 7 below, during the course of the war, Smuts paid nine visits to Europe and the Middle East to confer with Allied leaders. He took part in meetings of the War Cabinet, as he had done in 1917. In November of 1943, Smuts presided over the War Cabinet for 10 days during Churchill's absence at Teheran, thus acting as the *de facto* Prime Minister of Great Britain.[272]

As set forth in Chapter 8 below, Smuts played a central role in drafting the Preamble to the Charter of the United Nations.

Smuts lost the general election to the National Party in 1948, which had rallied a section of the all-white electorate behind its policy of *apartheid* as against the milder segregationist policies of Smuts, and against his leadership that had brought South Africa into the war on the side of the Allies against Hitler.[273]

Not long after this defeat, Smuts died, and he would largely be forgotten. He had no long-term constituency among a large section of the electorate: the Afrikaner Nationalists, who succeeded him, rejected his ties to the British, and resented what they saw as his lukewarm approach to the promotion of the Afrikaans language, and his domestic policies flew in the face of an emerging black nationalism.

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[271] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 309. See also Chapter 11 (2.2.2) below.

[272] The *Friedmann Papers*; see note 218 above.

[273] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 346.

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Jan Christian Smuts is a controversial figure in South African politics: he evoked strong reactions among his countrymen during his lifetime. Many rode into battle with him during the Anglo-Boer War; in the years after the 1914 rebellion, some of those same men joined in the Nationalists' fight against Smuts.

As stated, Smuts lost the 1948 election to D.F. Malan's Nationalist Party on the strength of its promised policy of '*apartheid*,' which Smuts rejected. Although Smuts held segregationist views, his approach to race was paternalistic; not dogmatic and ideological like that of the Nationalists.[274] In the same year that the United Nations adopted the Universal Declaration of Human Rights, the Nationalists in South Africa started implementing its policies of *apartheid*, thereby marching firmly against the whole trend of human progress.[275]

There are significant differences between Smuts' approach and that of the Nationalists.[276] Based upon Smuts' private writings during his time in active politics, Bill Schwarz argues that Smuts displayed 'ethical misgivings' and 'confusion' about his racial politics.[277] Towards the end of his career - as the Nationalist policy of *apartheid* was being institutionalised - Smuts warned that segregation had not worked, that apartheid cannot work, and that a way had to be found to accommodate Africans' aspirations within the framework of Western and Christian values.[278]

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[274] Nevertheless, the issue of race proved in many respects to be Smuts' Achilles' heel. In 1906, in a letter to John X. Merriman, the Cape politician, Smuts wrote regarding the race question: "When I consider the political future of the Natives in South Africa I must say that I look into shadows and darkness; and I then feel inclined to shift the intolerable burden of solving the sphinx problem to the ampler shoulders and stronger brains of the future." Smuts to J.X. Merriman 13 March 1906 in WK Hancock & J Van der Poel (eds) *Selections from the Smuts Papers Volume II June 1902 – May 1910* (1966) 169.

[275] B Friedman *Smuts: A reappraisal* (1976) 178.

[276] Shortly before the 1948 elections, Smuts wrote to Margaret Gillett: "The Native policies of the opposition will create chaos here and must be frustrated, and the good work of racial peace and economic progress must be continued." Smuts to MC Gillett 24 January 1948 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 175. After he lost the election, Smuts wrote the following about the apartheid policy of the Nationalists: " . . . the racial problem must surely get worse, and become a dark problem for our future." Smuts to MC Gillett 22 March 1949 in *Ibid* 287. Hancock notes that during the time of the elections, "[i]n speech after speech in and outside parliament he [Smuts] insisted that South Africa was a unitary and dynamic economy within which white and black South Africans had no option but to work together: 'we need them,' he said, 'and they need us.' He warned his fellow citizens against the propaganda of fear: if they preached the black peril, the Natives would soon start preaching the white peril. Hope, not fear, he declared, was the proper attitude of mind." WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 490.

[277] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 297, 298.

[278] JC Smuts Speech (1949) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 332.

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Throughout his career as a South African politician, spanning some half a century, a major part of Smuts' domestic focus was to effect unity between Boer and Briton - the two 'white races of South Africa' - who opposed each other during the South African War.

The defining characteristic of Smuts' international career was, perhaps, his involvement in war and peace. Although not trained as a soldier, he fought in three major wars that contributed to shaping modern era - stretching from a colonial war fought on horseback, to a world war ended by nuclear weapons. Much of Smuts' career was spent trying to prevent or mitigate the consequences of war. He was instrumental in the Peace of Vereeniging in 1902 that concluded the Anglo-Boer War. He was also centrally involved in establishing an inter-governmental order aimed at preventing the recurrence of war after both world wars - The League of Nations and the United Nations.

As set forth in Chapter 6 below, although Smuts was successful in launching his ideas on the League of Nations after the First World War, he was unable to steer the resulting Paris Peace Conference in the direction he desired. He opposed revenge as the basis of the Treaty of Versailles, arguing that it would soon cause another world conflagration. He strenuously advocated a treaty based on mercy and reconciliation, but to no avail.[279]

At the San Francisco Conference, Smuts argued that the root causes of war must be addressed to prevent a third word war. As will be seen in Chapter 10 below, this was his prime motivator for the inclusion of a statement on human rights in the Preamble, as well as for the references to raising the standard of living.

Smuts was not a conventional church-goer, but he was driven - which can be seen as both a strength and a weakness - to orientate the emerging world order along the lines of Western and Christian values of the time. According to Smuts, '[w]e do not want new orders. What the world wants is an older order of 2,000 years ago – the order of the Man of Galilee.'[280]

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[279] Smuts to D Lloyd George 26 March 1919 in Keith Hancock & Jean Van der Poel (eds) *Selections from the Smuts Papers IV November 1918 - August 1919* (1966) 83.

[280] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 58.

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In Smuts' view:[281]

> The American Declaration of Independence with its resounding affirmation of fundamental human rights became the inspiration of the French Revolution with its ideals of liberty, equality and fraternity. Thus by purely secular and worldly ways the Christian doctrine of human brotherhood has at long last won through and become the programme of the liberal advance.

It should be noted that, although liberalism is a central tenet of what may generally be described as Christian and Westerns values, ideas of racial superiority have also long infused these traditions. Therein lies the duality.

Many writers in these traditions - some of whom lived not long before Smuts, and with whose writings he was intimately acquainted - expressed themselves on the topic of race in terms that are no longer acceptable from the perspective of the present. Although Smuts did not hold extreme views about race, as compared to many of his contemporaries, conceptions of racial superiority was entwined with the 'liberal' value system that Smuts advanced through the new international structures that he helped to establish.

From the modern perspective, it is clear that Western values, as advanced by Smuts, established only a single set of contending norms. Cultural relativists believe there is no objective ground on the basis of which these Western values could claim superiority over any other geographic value system.

[281] As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 168 - 169.

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PART I

JAN CHRISTIAN SMUTS
AND THE FOUNDING OF THE LEAGUE OF NATIONS

CHAPTER 2

'HANDYMAN' AND 'ORATOR' OF THE EMPIRE

1. A brief history of international organisation

> Devising schemes to prevent war
> has been a philosophers' industry for centuries[282]

The conception of a universal association of humankind to preserve peace is not novel.[283] Ever since man's horizons expanded from personal to societal needs - moral philosophers and statesmen, political theorists and civic leaders have dreamed, written, argued, and worked for a world of peace.[284]

Efforts at international organisation pre-date the existence of the actual nation state.[285][286] The ancient Greeks, principally through the federation of the Delphic Amphictyony, was the nearest approach in ancient times to a working league of nations.[287] The *Pax Romana*, although not an 'international' peace, as Rome dominated the world and

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[282] S van Evera *Causes of war: Power and the root of conflict* (2013) 1.

[283] SJ Hemleben *Plans for world peace through six centuries* (1943) xi.

[284] According to Waters, these efforts have ranged from the abstract and simple pleadings of Isidore of Seville in the seventh century, to the concrete and complex plans presented by the United Nations in the 20th century. M Waters *The United Nations: International organisation and administration* (1967) 3.

[285] Kennedy states that the idea of a universal association of humankind goes back hundreds, if not thousands, of years. Some claim that the ancient Chinese philosophers or the Greek sages argued even then in favour of the establishment of a world order. Others suggest that the Catholic theologians of the Middle Ages suggested some form of universal governance, no doubt Christian in construction, but extending to all peoples. Kennedy mentions the institutional and scholarly names that feature in the study of the history of world government: '[T]he federation of Greek city states, the Stoics, various disciples of Confucius, Dante, William Penn, the Abbé St.-Pierre with his 'Project to Render Peace Perpetual in Europe (1713), the American founding fathers in their pursuit of 'a more perfect union, and then, perhaps especially, the Prussian philosopher Immanuel Kant' Perpetual Peace of 1795.' P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 3.

[286] However, the problem of world peace became acute and has always been present in a system of sovereign states. This is true *a fortiori* when they represent different political philosophies. How to achieve the benefits of independence *and* the blessing of security, has been the object of attention of all those working towards the goal of world peace. M Waters *The United Nations: International organisation and administration* (1967) 6.

[287] SJ Hemleben *Plans for world peace through six centuries* (1943) xi.

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recognised no equals, could nevertheless be considered the first attempt to achieve world peace.[288]

1.1 Ideas regarding international organisation and peace prior to the 19th century

Notable proponents of the conception of international organisation to preserve peace prior to the 19th century include, but are not limited to, Pierre DuBois, lawyer and adviser to Philip le Bel, king of France. In *De recuperatione, Terre Sancte* (written between 1305 and 1307), DuBois conceived of an association of nations in which France would be the dominant member.[289]

In contrast to DuBois, who proposed an assembly representative of the European powers, Dante Alighieri in *De monarchia* (published in 1559, but believed to have been written between 1302 and 1321), called for the establishment of a world state under an all-powerful emperor.[290]

The Spanish Dominican fryer, Francesco de Vitoria, the Spanish Jesuit, Francesco Suarez, and the Italian Protestant, Agberico Gentili, writing in the 15th and 16th centuries, expanded upon theories of aggression, self-defence, and the legitimate defence of third parties, first expounded by Saint Augustine and Saint Thomas Aquinas.[291] These scholars augmented theories relating to 'just war' from Catholic thought as well as the classical Greek and Roman traditions, with regard to the nature of law and war.[292]

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[288] *Ibid* xi - xii. Normand and Zaidi point out that powerful states in all ages have tended to seek the Pax Romana, the peace of empire and domination. See R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 42.

[289] Dubois' was the first actual blueprint for a union of states. M Waters *The United Nations: International organisation and administration* (1967) 6. See also SJ Hemleben *Plans for world peace through six centuries* (1943) 1; F Cede 'Historical introduction' in F Cede & L Sucharipa-Behrmann (eds) *The United Nations: Law and practice* (2001) 3.

[290] SJ Hemleben *Plans for world peace through six centuries* (1943) 4 - 5. See also See also F Cede 'Historical introduction' in F Cede & L Sucharipa-Behrmann (eds) *The United Nations: Law and practice* (2001) 3.

[291] J Kunz 'The United Nations Declaration of Human Rights' (1949) 43 *American Journal of International Law* 316.

[292] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 149.

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It is noteworthy that most of the advances towards international organisation occurred near the end of, or shortly after, 'a great and bloody war.'[293] It was not until the Thirty Years War (1618 - 1648) that a writer arose who was able to fuse the 'abstractions of theologians' with 'concrete lessons drawn from historical practice.'[294] Hugo Grotius synthesised ideas drawn from philosophy, theology, law and diplomacy, and applied them to his immediate political context, the Peace of Westphalia.[295]

Grotius, is perhaps best known for his work *De jure belli ac pacis* (published in 1625). He proposed three ways through which which controversies, dangerous to the peace of Europe, might be settled: (i) conference as opposed to force; (ii) compromise, or arbitration; and (iii) casting lots.[296] Grotius set forth the rules by which states should be governed, drawing from natural law, reason, and the consent of nations.[297] His aim was to mitigate the horrors of war through international law.[298]

In 1693, William Penn wrote *An essay towards the present and future peace of Europe*.[299] Penn recommended that the sovereign princes of Europe agree to convene a

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[293] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 3. The Congress of Westphalia - the protracted peace conference lasting six years that brought and end to the Thirty Years' War in 1648 - was illustrative of the discommodity and disorder resulting from the lack of widely accepted and observed diplomatic standards. Pettifogging over procedural details postponed the settlement of the dispute for years. The exorbitance and fruitlessness of the war, and the thwarting of and incompetence surrounding its settlement, provoked jurists and philosophers to think anew about the nature of war and peace. This pattern - of a surge of reformist activity in the wake of calamitous armed conflict - would recur in the Western world to transform conceptions of the institutionalisation of collective security. E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 148 - 149.

[294] *Ibid* 149.

[295] 'This synthesis is reflected in the eclecticism of Grotius's own career as a theologian, poet, and theorist, who was also a diplomat, bureaucrat, and advocate for the Dutch East India Company.' *Ibid* 149.

[296] *Ibid* 42, 46. See also A Yoder *The evolution of the United Nations system* (1997) 2 - 3.

[297] Grotius argued that natural law existed autonomously from any political power or authority. Thus, natural law was elevated above all human-created governments, it constituted a measuring rod agains which all laws and practices of any system of government could be measured, and it endowed all human beings with certain 'natural rights' of protection and just and equal treatment regardless of any civil or religious status. PG Lauren *The evolution of international human rights: Visions seen* (2003) 14.

[298] A Yoder *The evolution of the United Nations system* (1997) 3. 'Grotius's achievement,' notes Durward Sandifer, an international lawyer writing in 1940, 'was that he synthesised what had gone before him and set up a framework of law within which the practice of states could be codified.' As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 149. Contemporary scholars of international relations and international law use the phrase 'Grotian moment' to refer to a transformative change in the '*modus operandi* of international life.' The latter stages and the end of the Second World War constituted a 'Grotian moment' - an intense period of time when spectacular events catalysed pre-existing ideas. *Ibid*.

[299] SJ Hemleben *Plans for world peace through six centuries* (1943) 47.

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general parliament, for the purposes of formulating rules of justice which they would observe in their relations with one another.[300]

In 1712, Charles Irénée Caste de Saint-Pierre published a small volume at Cologne, which he titled *Mémoires pour render la paix perpétuelle en Europe*.[301] Saint-Pierre's plan to pacify Europe was drawn up in the form of a treaty, which laid the framework for a perpetual congress or senate. This federation was not to be interested in the form of government of any state, but, if required, would give prompt assistance to any government that had to contend with sedition or rebellion.

It was in 1761 that Jean Jaques Rousseau revised Saint-Pierre's work in *A project for perpetual peace*.[302] Rousseau advocated a federation of Europe, with a court or parliament to arbitrate all disputes between the member states. The decisions of the parliament would be enforced by a federal army, if necessary.

A plan that differed in many respects from that of Rousseau was the project of Jeremy Bentham entitled *A plan for a universal and perpetual peace* (published posthumously in 1843).[303] He proposed the establishment of a a world court, the decrees of which would be enforced by public opinion, through the press and public manifestos, by putting the offending state 'under the ban of Europe.'

Immanuel Kant was a powerful and consistent exponent of the doctrine of human freedom, and during the last 20 years of his life he became increasingly interested in the prevention of war.[304] Kant published *Zum ewigen frieden* in 1795 at Königsberg - the year in which the Peace of Basel had closed the first stage of the wars following the French

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[300] *Ibid* 48 - 49. See also F Cede 'Historical introduction' in F Cede & L Sucharipa-Behrmann (eds) *The United Nations: Law and practice* (2001) 3; R Basu *The United Nations: Structure and functions of an international organisation* (1993) 4.

[301] SJ Hemleben *Plans for world peace through six centuries* (1943) 56. See also R Basu *The United Nations: Structure and functions of an international organisation* (1993) 4.

[302] SJ Hemleben *Plans for world peace through six centuries* (1943) 73.

[303] *Ibid* 82; See also R Basu *The United Nations: Structure and functions of an international organisation* (1993) 4.

[304] J Bourke 'Kant's doctrine of "perpetual peace"' (1942) 17 *Philosophy* 325.

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Revolution.[305] It attracted immediate attention and became a classic work of international government.[306]

In John Bourke's opinion, Kant was no 'visionary or day-dreaming Utopian. His thought is eminently sober and practical.'[307] He does not make any claim to offer a complete program, cut-and-dried, for the abolition of war, at once, or in a lifetime, or in a century. In fact, Kant makes clear that 'perpetual peace' is an ideal that is likely not ever completely realisable - he writes of an 'an approximation advancing *ad infinitum*.'[308]

Kant realises that between sovereign states, no peace of any lasting kind could be expected. For, unlike the relationship between individuals within a state, there is no common external authority regulating inter-state relations corresponding to that of constitutional and civil law. Self-interest is, and cannot but be, the ultimate maxim for any sovereign state. Kant's proposed remedy is that states must cease to be completely independent, for otherwise 'the method by which states prosecute their rights can never by by a process of law . . . but only by war.[309]

The essay by the Prussian philosopher starts with six 'preliminary conditions for perpetual peace between nations.' The are as follows:[310]

(i) No treaty of peace should be regarded as valid if it contains secret reservations of material for future war;

(ii) No independent state may be acquired by another through inheritance, exchange, purchase, or gift;

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[305] *Ibid*. See also SJ Hemleben *Plans for world peace through six centuries* (1943) 87; F Cede 'Historical introduction' in F Cede & L Sucharipa-Behrmann (eds) *The United Nations: Law and practice* (2001) 3; R Basu *The United Nations: Structure and functions of an international organisation* (1993) 4.

[306] SJ Hemleben *Plans for world peace through six centuries* (1943) 87, 88.

[307] J Bourke 'Kant's doctrine of "perpetual peace"' (1942) 17 *Philosophy* 325.

[308] I Kant *Perpetual peace* MC Smith (trans) (1903) Appendix II last paragraph. To the contrary, Kennedy asserts that, to say that these early efforts were idealistic, 'would be a gross understatement.' 'Kant's great treatise' was imposed only a few years before Napoleon began his 'rampage across Europe.' However, the underlying ideas remained, and formed part of the intellectual architecture of the Enlightenment, the rise of the free trade movement, and the advance of Western liberalism. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 4.

[309] I Kant *Perpetual peace* MC Smith (trans) (1903) second section, article 2.

[310] *Ibid*.

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(iii) Standing armies were a perpetual menace to peace and should be abolished;

(iv) No national debts should be incurred for the eternal affairs of the state;

(v) No state should interfere by force ('violently') with the internal affairs of another state; and

(vi) No state at war should commit such acts of hostility (including espionage and inciting disaffection in the hostile state) as would render future confidence impossible.

The second section of Kant's essay contains the definitive articles of perpetual peace. The civil constitution of each state should be 'republican.' Perpetual peace could only be achieved under a republican constitution, as the consent of the subjects was needed to declare war.[311]

In addition, the law of nations should be founded on a federation of free states. The 'federation' would form the institutional basis for an international law that shall be something more than a nebulous tissue of courtesies to be disregarded as interest dictates.[312] Peace required that states resolve to give up their lawless freedom and yield to the coercion of public laws.

Kant's proposals differed from those of many of his predecessors in that he struck at the roots of war.[313] War had never been thought of, even by Grotius, as other than a necessary phenomenon.[314] For Kant, war was the 'scourge of the human race' that 'ma[de] more bad men than it t[ook] away.' He makes the further important point that war never decides any question of right or wrong; war is a mere trial of strength, and 'victory' only signals who is stronger, not who is right.

Kant is most insistent that peace is not merely the absence of war. It is something that has to be prepared for, and established, with effort - hard and watchful effort, forward-

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[311] A 'republican state,' according to Kant, is one in which the citizens submit to the sovereign authority and obey the laws, because, and only because, in the operations of these they recognise the expressions of their own wills conveyed and rendered concrete through representatives whom they themselves have elected, and untouched by any powers which do not derive authority from them. I *Ibid* second section article I.

[312] *Ibid* second section, article 2. See also F Cede 'Historical introduction' in F Cede & L Sucharipa-Behrmann (eds) *The United Nations: Law and practice* (2001) 3.

[313] SJ Hemleben *Plans for world peace through six centuries* (1943) 93.

[314] J Bourke 'Kant's doctrine of "perpetual peace"' (1942) 17 *Philosophy* 331.

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looking, and pregnant with better things for the ages to come.[315] In this regard Kant's famous *dictum* is: 'It is no longer a question of whether perpetual peace is really possible or not . . . we must simply act as if it could really come about.'[316]

1.2 International organisation from 1814 to 1914: The Concert of Europe

In order to gain a better understanding of the momentous transformation in the conduct of international affairs heralded by the birth of the League of Nations, one has to ask:[317]

> How . . . had international affairs been conducted before 1914? Who had run the system, and what flaws in their methods . . . or even their moral constitution, had determined that it should break down, bringing tragedy to so many millions?

As Martti Koskenniemi notes, international politics in the 1860s was characterised by the seeming coincidence of two facts. On the one hand, the preceding half-century saw one of the longest periods of peace in European history.[318] On the other hand, however, that peace had been created and enforced through a pact among the great European Powers. At the Congress of Vienna (1814 - 1815) victors of the Napoleonic wars - Great Britain, Prussia, Russia and Austria - agreed to maintain stability and the *status quo*.[319]

Three of these Great Powers – Austria, Prussia, and Russia – 'were governed by absolutist monarchs whose main motive for cooperation seemed to be their shared wish to curb any proposal for representative government or increased franchise.'[320] This pact of Great Powers that attempted to maintain peace in Europe for as century through

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[315] *Ibid*.

[316] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 150.

[317] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 4.

[318] A 'long calm,' as Koskenniemi describes it, 'punctuated only by occasional and limited military conflict in the margins.' M Koskenniemi *The gentle civilzer of nations: The rise and fall of international law 1870 - 1960* (2001) 11. See also S Pinker *The better angels of our nature: Why violence has declined* (2011) 662.

[319] At the time, this implied 'the purity and continuity of the bloodlines of Europe's ruling elite.' E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 150.

[320] M Koskenniemi *The gentle civilzer of nations: The rise and fall of international law 1870 - 1960* (2001) 11.

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congresses and conferences became known under the 'grandiose name'[321] of the Concert of Europe (the 'Concert').[322]

The Concert exhibited the following general characteristics, which could be contrasted with the (intended but not always realised) attributes of League of Nations that was to follow:

(i) The Concert was elitist. The 'system' was essentially a European-centered pentarchy,[323] and Europeans – 'white, Christian, generally male and for the most part aristocratic' – had run it.[324]

(ii) The Concert was explicitly exclusionary; it did not function on the principle of the equality of states.[325] The right to attend a conference or a congress was almost always limited to the five or six European Great Powers.[326] Attendance by any of the recently independent Latin American states, China, Japan or any other Asian countries, or the people of Africa, was not even within the realm of contemplation.

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[321] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 6.

[322] See generally P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 4; M Mazower *Governing the world: The history of an idea* (2012) 34 - 56; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 1 - 24. The first of the these congresses, the Congress of Vienna, met from September 1814 - June 1815 with the objective of, among others, settling the many disputes arising out of the Napoleonic Wars. France was welcomed back into the fold of European Powers at the Congress of Aachen in 1818, and Italy joined the inner circle of the Great Powers in the late 1860s. *Ibid* 5.

[323] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 6.

[324] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 4. The Great Powers, 'which controlled the wealth and commerce of the nineteenth century, which ruled the seas an dominated almost all the world outside Europe, was for the most part governed by monarchs who exercised real executive power in their countries, notwithstanding any façade of parliamentary legislatures that might exist. They were buttressed by landowning aristocrats fortified by wealth drawn from industry and trade as the Industrial Revolution spread.' *Ibid*. For the extent to which the English aristocracy dominated the government of the United Kingdom during the twenty years prior to the outbreak of the Great War, see generally BW Tuchman *The proud tower: A portrait of the world before the war 1890 – 1914* (1966) 3 - 59. The thrones of Europe were also linked to one another through a series of marriage ties that helped create a sense of the Great Powers being a family. FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 5.

[325] M Mazower *Governing the world: The history of an idea* (2012) 38. In the words of Friedrich von Gentz, confidant of and advisor to Prince Metternich: 'The states of the second, third and fourth rank submit tacitly . . . to the decisions made in common by the great preponderant Powers.' As quoted in *Ibid* 38 - 39. The justification for this hierarchy was that the Great Powers articulated the collective interests of the continent, 'conscious that Europe's fate lay in their hands' and that they were 'the principal guarantors of its stability.' *Ibid* 38.

[326] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 7. Small countries were rarely admitted to meetings of the great. Northedege recounts an incident at a conference in London in 1831 to deal with the Belgian issue, when the King of the Netherlands, who until the 1830s ruled over Belgium, were kept waiting in an ante-room and told that he would be sent for when he was wanted. The smaller European states were nothing more than 'pawns in the game, shielded from the rapacity of one great Power only by becoming totally subservient to another.' *Ibid* 20.

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(iii) The Concert had a 'deeply conservative sense of mission.'[327] The Holy Alliance, consisting of Austria, Russia and Prussia, insisted on the right to intervene by force against those states whose governments came to power through revolution, as revolutionary insurrections constituted a threat to 'legal order and stability.'[328]

(iv) The Concert could in no way be described as a legislative process. The arrangements among the Powers were all 'highly intermittent and *ad hoc*;[329] such regulations as issued from them were specific in the extreme.'[330] Thus, there were never any sense that the 'affairs of a [world] community were being regulated . . .'[331]

(v) Bellicosity was at order of the day. The Powers did not regard the use of force by states as wrong or retrogressive.[332] War was still regarded as glamorous, and the Powers did not hesitate to 'draw the sword' if interest of reputation so demanded.[333]

The Franco-Prussian war of 1870 - 1871[334] and the establishment of the German Empire inaugurated a new era in foreign policy: a turn from an international moral order to

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[327] M Mazower *Governing the world: The history of an idea* (2012) 39. 'Based on respect for kings and hierarchy, it prioritized order over equality, stability over justice.' *Ibid* 39 - 40.

[328] *Ibid* 44. Gentz shared Edmund Burke's view that the triumph of the French Revolution meant nothing less than the death of Europe. *Ibid* 40. This issue split Britain from the states of the Holy Alliance. George Canning, Lord Castlereagh's successor as Foreign Secretary, opposed 'the doctrine of a European police,' arguing that it was only when a state's national interest were threatened by the actions of another state that intervention was warranted.' *Ibid* 45.

[329] Although conferences and congresses generally were called in one of three circumstances – to negotiate and prepare a peace treaty at the end of a war, to address an emergency, or to deal with some issue that has been germinating over a period an was now ripe to be addressed – for most of the century before 1914 there was no rule for determining when a conference or congress should be held. They were generally called by mutual agreement of the Powers at any time to discuss any subject they deemed worthy. FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 7.

[330] *Ibid* 9 - 10.

[331] *Ibid* 10.

[332] *Ibid* 21. On the contrary, 'it was the normal, time-honoured practice, to which prestige and a sense of almost knightly honour attached.' *Ibid*.

[333] *Ibid*. The military uniforms of the day, splendid and colourful, symbolised the custom of war. *Ibid*.

[334] Described by Maine as 'one of the greatest of modern wars, which probably never had a rival in the violence and the passion which it excited. See HS Maine *International law. The Whewell lectures* (1887) 128 - 129 as cited in M Koskenniemi *The gentle civilzer of nations: The rise and fall of international law 1870 - 1960* (2001) 36.

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realpolitik.[335] Mid-Victorian faith in the ability of science and industrialism to bring about peace and harmony was eroding.[336]

In addition to the 'time-honoured' notions about war, the 19th century also saw the rise of romantic militarism – the doctrine that 'war is noble, uplifting, virtuous, glorious, heroic, exciting, beautiful, holy, thrilling.'[337] In this era, writers were ebullient about the virtues of war. For example:[338]

> [War is] life itself . . . We must eat and be eaten so that the world might live. It is only warlike nations which have prospered: a nation dies as soon as it disarms.[339]

> [T]he victorious war is the social ideal: the victorious war is the ultimate means for every highest objective. In war the State demonstrates its real being, it is the fullest proof of the special quality of the State . . . In the victorious war legal thought sets the ultimate norm which decides which State has Right on its side . . . Who can, may also.[340]

Peace, by contrast, was 'a dream and not a pleasant one at that,' Field Marshal von Moltke reminded the Heidelberg law professor, Johann Kaspar Bluntschli in 1880, '[w]ar is an element of the divine order of the world.'[341]

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[335] *Ibid*.

[336] *Ibid*.

[337] J Mueller *Retreat from doomsday: The obsolescence of major war* (1989) 39 as cited in *Ibid* 528. As Pinker notes, 'Among liberals and conservatives alike, the notion took hold that war called forth spiritual qualities of heroism, self-sacrifice and manliness and was needed as a cleansing and invigorating therapy for the effeminacy and materialism of bourgeois society.' *Ibid* 667.

[338] *Ibid*.

[339] Emile Zola quoted in *Ibid* 667 - 668.

[340] E Kaufmann *Das wesen des völkerrechts und die clausula rebus sic stantibus* (1911) 146, 153 as cited in M Koskenniemi *The gentle civilzer of nations: The rise and fall of international law 1870 - 1960* (2001) 179.

[341] Quoted in M Mazower *Governing the world: The history of an idea* (2012) 211.

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As of the 1870s, a constant *bellum omnium*, or at least the threat thereof, reigned between the nations of Europe.[342] The alliance system, and the principle of the balance of power that held it together, were widely blamed for the tragedy of the Great War.[343]

Commenting on the alliance system, Lord Robert Cecil, an ardent supporter of the League of Nations, wrote that:[344]

> The Balance of Power was purely negative. It did not aim at improving the common life of nations. It accepted the proposition that every nation was the potential enemy of every other nation, and it merely sought to limit the consequences of that disastrous assumption.[345]

With regard to the First World War, Margaret MacMillan remarks:[346]

> [P]roud, confident, rich Europe had torn itself to pieces . . . Four years of war shook forever the supreme self-confidence that had carried Europe to world dominance. After the Western Front, Europeans could no longer talk of a civilizing mission to the world. The war toppled governments, humbled the mighty and upturned whole societies . . . [T]he international order had to be re-created on a new and different basis.

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[342] 'Today, unfortunately, Europe's horizon is more threatening than ever; not only some black spots appear but dark, blood-colored clouds cover it.' E de Laveleye *Des causes actuelles de guerre en Europe et de l'arbitrage* (1873) 11 as cited in M Koskenniemi *The gentle civilzer of nations: The rise and fall of international law 1870 - 1960* (2001) 36.

[343] Northedge makes the point that the Concert of Europe had largely succeeded in maintaining the peace in Europe for the century following the defeat of Napoleon. 'During this period, the great Powers had never fought each other, except in the largely futile Crimean War at mid-century, the minor Franco-Austrian war in Italy in 1859, and the brief, though politically momentous wars of Prussia against Austria in 1866 an against France in 1870 - 71. Prussia had also fought against Denmark in 1864. Only the Franco-Prussian war had left the fires of vengeance smouldering – until 1914, in fact.' FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 3.

[344] As quoted in *Ibid* 22.

[345] On the positive side, Borgwardt notes that the Concert's legacy - that of convening periodic meetings of high-level diplomats - endured. The fundamental concept of attempting to secure stability in European inter-state relations through regular meetings at the ambassadorial level, instead of convening emergency meetings when a crisis loomed, became a material *impetus* for the underlying mechanism of the League of Nations and United Nations systems. E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 150.

[346] M MacMillan *Paris 1919: Six months that changed the world* (2001) xxv – xxvi.

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The League of Nations constituted a 'dramatic and ambitious counter-model to the old . . . and discredited arrangements established at Vienna a century earlier.'[347]

2. 'Handyman of the Empire': Smuts as a member of the British War Cabinet 1917 - 1918

In February of 1916, Jan Christian Smuts - the erstwhile Boer guerrilla general, now a Lieutenant-General in the British Army - took command of 45 000 Imperial troops in German East Africa.[348] After nearly completing the conquest of Tanganyika in a 'striking and vigorous'[349] campaign, in March of 1917, Smuts was seconded by the Prime Minister of the Union of South Africa, General Louis Botha, to attend the first Imperial War Conference in London.[350]

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[347] M Mazower *Governing the world: The history of an idea* (2012) 52. It should also be noted that, although the Hague Conferences of 1899 and 1908 were not, in the strict sense, projects to guarantee peace, some authors view them as advancing the cause of international organisation. Krasno argues that the contribution of the Hague Conferences lay, not only in the introduction of non-European states, but also in the equality afforded to all participant nations, in contrast to the Great Power hegemony of the Concert. According to Krasno, the Hague Conferences also introduced the concept that international relations might be based on standard norms and regular convening of members. J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 6. Although the Hague conference 'failed, and failed miserably,' to limit military technology or protect civilians in conflict, Normand and Zaidi nevertheless believe that the conference could be seen as: '[T]he first halting step on a long journey marked by ever-stronger popular efforts to develop universal standards of justice that culminated in the establishment of the human rights regime after World War II.' R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 36. Bentwich comments that one notable step was made towards the peaceful settlement of disputes: the creation of an permanent tribunal of international arbitration. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 11. Kennedy also points out that latter part of the 19th century witnessed the start of a series of measures, both legal and commercial, designed to move the world away international anarchy - the creation of the International Committee of the Red Cross (1864), and by the end of the century, the two Hague Peace Conferences (1899 and 1907). Moreover, the technical innovations of the Victorian age continued apace, such as the laying of the first submarine cable between the United States and Great Britain. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 5. Waters also emphasises Aside from the largely political efforts which were the concerns of the Concert system, the 19th century also saw the formation of public international unions. They appeared early in the century and flourished in increasing numbers after 1850. They covered a whole variety of non-political fields. By 1914, approximately 30 of these unions existed, including the Universal Postal Service, the International Bureau of Weights and Measures, the International Sugar Union, the International Opium Commission, and the International Office of Public Health. In each of these areas difficulties arose which were beyond the capacity of any one state to resolve. It soon became evident that this functional approach to intergovernmental and inter-societal problems could pay richer dividends than the approaches traditionally followed. M Waters *The United Nations: International organisation and administration* (1967) 8.

[348] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010)

[349] 'Jan Christiaan Smuts: The Roundtable's oldest friend' (1950) 161 *The Round Table* 2 - 21, 4.

[350] *Encyclopaedia Britannica volume 20* (1967) 706. Adam Toose writes that When Lloyd George took office in December 1916, he was determined to widen the political base of the Imperial war effort. The centrepiece of his strategy was to create a unified Imperial War Cabinet. In it, he gave Smuts a very prominent role. A Tooze *The deluge: The Great War and the remaking of global order, 1916 - 1931* (2015) 181.

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Smuts arrived in Southhampton on 12 March 1917.[351] His success as a military commander against the German general, Von Lettow-Vorbeck, in German East Africa preceded him.[352] Churchill lauded Smuts:[353]

> At this moment there arrives in England from the outer marches of the Empire a new and altogether extraordinary man . . . The stormy and hazardous roads he has travelled by would fill all the acts and scenes of a drama. He has warred against us - well we knew it. He has quelled rebellion against our own flag with unnerving loyalty and unfailing shrewdness. He has led raids at desperate odds and

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[351] O Geyser 'A Commonwealth prime minister: Jan Christiaan Smuts' (1991) 80 *The Round Table* 431.

[352] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 283. Smuts son, Jannie, describes the occasion thus: 'England hailed him as the hero of the hour, the conqueror of the first big success of the war. The propaganda value of this former Boer general, now fighting for Britain, was exploited to the full. England needed cheering news. Into this world of weariness, dejection and disaster my father burst with a new message of hope and encouragement.' JC Smuts *Jan Christian Smuts: A biography* (1952) 170. Thornton writes: 'Smuts appeared on the British world like some visiting Martian, yet with the proper credentials. The role of sage and seer and prophet became him. In a world of the merely competent and the frankly bewildered, Smuts stood out like a beacon, because he was almost alone among men in high places in thinking about the nature that the future might take.' AP Thornton 'Smuts: A journey with maps' (1966/1967) 22 *International Journal* 77 - 86, 83. On Smuts' arrival in London, at a time when the British war position was weak and discouraging, he was fêted and lionised. T Cameron *Jan Smuts: An illustrated biography* (1994) 76. His incisive mind, unbeaten spirit, and fresh faith in the British system had a tonic effect. 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36. From the moment of his arrival in England, Smuts received a hero's welcome. The words 'chivalrous,' 'original' 'rational,' 'subtle,' 'magical,' 'imaginative,' 'historic,' 'classical,' and 'prophetic' were used to describe Smuts. There was talk of renaming German East Africa 'Smutsland.' Military men, politicians and society lionised him for, as Winston Churchill said, Smuts was 'the only one who is fresh and bright, unwounded mentally and physically.' His essential, extraordinary optimism was something England in the war years desperately needed. In September of 1917, CP Scott told Lloyd George that Smuts was perhaps the most popular man in the country.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 34 - 35, 38. Smuts was compared to Caesar, Cromwell, and Napoleon. Schwarz writes: 'For all this time in Britain, [Smuts] was honoured as an exceptional public man.' Both houses of parliament hosted a banquet in his honour, at which he scoffed at the idea that he was a guest of the British, 'but simply as one of yourselves.' South Africans organised a dinner at the Savoy to celebrate his success. In 1917, Smuts received the freedom of the City of London, of Edinburgh, and six other cities in Britain. During the same year, the universities of Cambridge, Edinburgh, Glasgow, Wales, Dublin, and Manchester awarded him honorary degrees. Schwarz observes: 'Offers of high honours came his way incessantly. B Schwarz *Memories of empire volume 1: The white man's world* (2011) 284. The Middle Temple and The Society of Law Teachers made Smuts an honorary fellow. O Geyser *Jan Smuts and his international contemporaries* (2001) 76. King George V made Smuts a Privy Councillor and first of the newly created Companions of Honour. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 37. Emily Hobhouse warned Smuts in a roundabout, teasing fashion that he was in 'danger' of becoming anglicised: 'I . . . said that I should live to see you Earl of Irene and Lord of Doornkloof.' E Hobhouse to Smuts 7 March 1917 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III* June 1910 - November 1918 (1973) 459 - 460.

[353] As quoted in JC Smuts *Jan Christian Smuts: A biography* (1952) 170.

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> conquered provinces by scientific strategy . . . His astonishing career and his versatile achievements are only the index of a profound sagacity and a cool, far-reaching comprehension.[354]

Smuts' success – uniquely welcome in a war marked in the European theatre thus far by almost unrelieved failure for the Allies – did not escape the notice of Lloyd George. On 20 March 1917, Lloyd George introduced Smuts to the Imperial War Cabinet as 'one of the most brilliant generals in this war.'[355]

After Smuts had been in England for three months, upon the conclusion of the Imperial Conference, Lloyd George prevailed upon Smuts to remain in England and to join the War Cabinet proper[356] - the Prime Minister's inner cabinet and supreme executive body in the waging of the war.[357] Such an appointment was unprecedented for someone who was not a member of either Houses of Parliament,[358] let alone for a 'colonial.'[359]

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[354] Lentin comments that Smuts quickly established his pre-eminence among his fellow colonials. Former Prime Minister Asquith saw in Smuts 'a man of first-rate ability, head and shoulders above the rest of the Dominion representatives. As quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 35. In a letter to his brother, Frederick Scott Oliver, a former member of *Milner's Kindergarten*, thought Smuts superior to any member of the War Cabinet for 'pure intellect, the ability to penetrate to the heart of a subject, coupled with the still rarer quality of being able to state clearly what he has seen.' As quoted in O Geyser *Jan Smuts and his international contemporaries* (2001) 83.

[355] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010)

[356] 'So deep was the impression that General Smuts made at this time upon his colleagues, nay upon the nation,' Lloyd George wrote later, that we would not let him leave us when the conference ended. We insisted on keeping him here to help us at the centre with our war efforts.' As quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 432.

[357] Jannie Smuts described the War Cabinet as the 'select body of six men who were Britain's brains behind the war. Here, as minister without portfolio, Smuts served with Lloyd George, Lord Curzon, Andrew Bonar Law, Lord Milner, Austen Chamberlain and George Barnes, with Maurice Hankey as Secretary. JC Smuts *Jan Christian Smuts: A biography* (1952) 175. Smuts occupied a seat on the war cabinet for approximately 18 months. Beukes opines that Lloyd George's primary motivation in coopting Smuts on he War Cabinet was his desire to retain the great intellectual gifts of Smuts in London for the prosecution of the war. P Beukes *The holistic Smuts* (1989) 36.

[358] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 37. Hancock asks: 'How could a South African politician join the British Cabinet without becoming a British politician? WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 436. Geyser writes: 'Fifteen years previously Smuts had been a Boer general and now he was a member of a British War Cabinet in which was vested more power than in any other similar body since the dawn of time!' O Geyser *Jan Smuts and his international contemporaries* (2001) 82. To resolve the paradox, Lloyd George attempted to persuade Smuts to take a seat in the House of Commons. However, after consulting Botha, Smuts refused. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 436. Millin points out that, despite appearances, the legal position simply was that the King invited whom he pleased to join his Cabinet. SG Millin *General Smuts volume 2* (1936) 51.

[359] T Cameron *Jan Smuts: An illustrated biography* (1994) 75 - 76.

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However, according to Bill Schwarz, Smuts' independence placed him in the unique position to be:[360]

> [A] trouble-shooter, called upon to deal directly with intractable crises which could not easily be resolved by conventional party-political means . . . in this respect he was particularly regarded by both the two war leaders, Lloyd George and Churchill.[361]

There was no end to the missions and tasks Smuts was given, and he became known by the sobriquet, 'Handyman of the Empire.'[362] Smuts was that 'gifted and versatile Dutchman,' the Prime Minister commented, 'who could be safely entrusted to examine into the intricacies of any of the multifarious war problems, and unravel and smooth them out.'[363]

As the only member of the War Cabinet to have commanded in the field, Smuts was consulted extensively on the strategy of the war.[364] In April of 1917, Lloyd George sent him to France and Belgium to undertake a thorough examination of the over-all military situation on the Western Front.[365]

In December of 1917, traveling incognito as 'Mr. Smith,' Smuts was sent on a secret mission to Switzerland to explore the possibility of a separate peace with Austria-Hungary. However, Smuts' negotiations with the former Austrian Ambassador to London, Count

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[360] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 287.

[361] Millin points out that Smuts' position afforded him a unique advantage: 'He had the freedom to do things English statesmen might not do; he could so such things on their behalf; in any emergency, in any business that fell into no regular department, there he was, a man of the most diverse experience and capacity, ready and able to undertake that emergency.' SG Millin *General Smuts volume 2* (1936) 51.

[362] *Ibid* 51. 'With his alert attention and great mind,' writes Beukes, 'Smuts applied himself to the great tasks of the war effort . . .' P Beukes *The holistic Smuts* (1989) 36. Lentin notes that, so highly did Lloyd George rate Smuts' abilities, that he he considered appointing Smuts Foreign Secretary. Smuts, he said, 'would be the ideal man.' As quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 41.

[363] As quoted in P Beukes *The holistic Smuts* (1989) 36.

[364] With regard to the services that Smuts performed for the British government during 1917 - 1918, see generally WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 424 - 504; SG Millin *General Smuts volume 2* (1936) 31 - 81; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 40 - 45; O Geyser *Jan Smuts and his international contemporaries* (2001) 73 - 91; JC Smuts *Jan Christian Smuts: A biography* (1952) 168 - 177. Time magazine summarised them thus: 'Smuts had a hand in almost everything. He pacified Welsh coal strikers, established the war priorities committee, bucked up public morale, helped to organise the RAF and reorganise London's air raid defences, inspected the Western Front, advised on grand strategy, met with the Austrians to feel out the possibility of a separate peace, and was offered and turned down the command in Palestine.' 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36.

[365] Smuts held extensive discussions with Sir Douglas Haig. Smuts also met with the French president, Painlevé, and King Albert of Belgium. JC Smuts *Jan Christian Smuts: A biography* (1952) 171.

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Albert Menssdorf, was ultimately not constructive.[366] Smuts served on the Middle East Committee under Lord Curzon.[367] Not satisfied with General Murray's progress against the Turks in the Near East, Lloyd George offered Smuts the Palestine command. Smuts reluctantly refused.[368]

In September of 1917, Lloyd George appointed Smuts as chairman of the War Priorities Committee, established at Smuts' suggestion to deal with the allocation of resources between competing departments.[369] The work was daunting. 'I have never worked so hard in my life,' Smuts recalled later. 'My hair became white.'[370] In October of 1917, Lloyd George dispatched Smuts to quell a coal miner's strike in South Wales, which, if it continued, would spell disaster for the British war effort.[371] Of great long-term significance was Smuts' response to London's vulnerability to German air raids. Smuts

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[366] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 41; O Geyser *Jan Smuts and his international contemporaries* (2001) 73 - 91; JC Smuts *Jan Christian Smuts: A biography* (1952) 85.

[367] Smuts was also a member of the Northern Neutral Committee, under Carson, which watched Northern Europe, and later became a member of a secret committee to safeguard the Netherlands. *Ibid* 191 - 192; SG Millin *General Smuts volume 2* (1936) 73.

[368] However, in 1917 Smuts did assist in the planning of the Alexandretta campaign against the Turks, as well as the the northward advance which later took place through Palestine. *Ibid*. Smuts declined an expedition to Russia. *Ibid*. Lord Northcliffe earnestly requested the British Government to send Smuts to the United States. Northcliffe believed Smuts was 'the only military man who could help' enlighten Americans about the British war effort. Ulitmately, however, the War Cabinet felt that Smuts was indispensable in London. O Geyser *Jan Smuts and his international contemporaries* (2001) 86. Smuts also declined the chairmanship of the Irish Convention, established by Lloyd George at Smuts' behest in the wake of the 1916 Easter Rebellion. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 42.

[369] *Ibid* 43; SG Millin *General Smuts volume 2* (1936) 74 - 75. When Smuts arrived in England, he was forcibly struck by the confusion of lack of coordination on questions of production and supply among the various departments in the war. There was rivalry to get weapons, overlapping, and inefficiency. JC Smuts *Jan Christian Smuts: A biography* (1952) 192.

[370] *Ibid* 191.

[371] At that time, the Navy reportedly had coal reserves of only one week. As Smuts faced the massed ranks of tens of thousands of sullen workers at Tonypandy, he first invited them to sing. 'This was a call which no Welshman could resist,' and after an emotional rendering of 'Land of My Fathers' and a few words from Smuts, the strike was over. Smuts also settles a police strike in London, as well as a strike by 50 000 munitions workers at Coventry. *Ibid* 189 - 190.

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recommended not only a variety of measures to protect the capital, but also the establishment of the Royal Air Force as an independent branch of the armed services.[372]

It was thus the First World War which had brought Smuts from being a local South African politician to a position of international influence.[373] Bill Schwarz comments that, in conducting his public duties during both world wars at the behest of first Lloyd George, and then Churchill, Smuts was perceived as an 'authentically imperial statesman, who carried within him a vision of the whole empire, unimpeded by mere national interest.'[374]

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[372] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 43 - 44. See also K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 69. At the start of hostilities in 1914, flying was in its infancy and the machines and armaments were crude and elementary. However, as the war continued, the airplane became a formidable weapon. With increased speed and performance, came refinements of offensive armaments. JC Smuts *Jan Christian Smuts: A biography* (1952) 192. Smuts viewed air power as a formidable offensive arm that could carry the fight into the German heartland at a time when the Allied forces were only just beginning to stem, with painful slowness and high casualties, the German advance. Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 44.

[373] It was never afterwards possible for him to reconcile his wide vision of South Africa's future with the narrow intensity of Afrikaner nationalism.'Jan Christiaan Smuts: The Roundtable's oldest friend' (1950) 161 *The Round Table* 4.

[374] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 290. During his time in the War Cabinet, Smuts worked alongside Milner and Lord Curzon, and it was clear that he 'moved into their ideological orbit.' The arch-imperialist, Leo Amery, was delighted to see their growing rapprochement: 'Great fun to see Lord M and Smuts hobnobbing like the best of old friends.' As quoted in *Ibid* 308. However, for Smuts, another England was always active in his imagination: 'not the England of Empire and Union Jack, but the England of Nonconformist radical liberalism, free-thinking and communitarian, which thrived on its hostility to the imperialism . . . of Milner.' *Ibid*. Forsaking the company of the statesmen, civil servants, politicians, and magnates with whom he engaged during the week, he regularly sought the hospitality of his Quaker friends, Alice Clark and the Gilletts at Oxford, at weekends, finding among them rest, recreation, and solace. 102 Banbury Road, Smuts later wrote, 'has done more for me that the War Cabinet or any other of the great institutions of England.' Smuts to MC Gillett 20 July 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 276.

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3. 'Orator of the Empire': Smuts' reflections on the League of Nations idea during the war

3.1 'The necessity of devising means to diminish the risk of future wars'

During the war, and amid his 'most untiring labours in the most varied and difficult tasks,'[375] Smuts ruminated on the idea of a league of nations.[376] The earliest articulation of Smuts' conception of a league of nations can be traced to a draft resolution that he submitted to the Imperial War Cabinet on 21 April 1917:[377]

> The [Imperial War Cabinet] were deeply impressed with the grave dangers confronting the civilized world if warfare continued unrestricted in future, and with the necessity of devising means which would tend at any rate to diminish the risk of future wars. They felt, however, that any large or ambitious project to ensure world peace might prove not only impracticable, but also harmful in that it might foster the false idea that any serious risk of future war had passed away. They were agreed to affirm in principle that some form of conference or conciliation among the Powers should be established to deal with international disputes not susceptible to arbitration or judicial procedure, and that the details of the scheme should be discussed with our allies and especially the U.S.A. before the conclusion of the war. In their opinion, such a scheme to promote future world peace should, if possible, be embodied in the peace treaty itself.

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[375] In a letter to Alice Clark, Smuts mentioned that he had received 'a most handsome vote of thanks from the War Cabinet "for my most untiring labours in the most varied and difficult tasks."' Smuts to A Clark 12 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 39.

[376] SG Millin *General Smuts volume 2* (1936) 167; P Beukes *The holistic Smuts* (1989) 175. Millin expounds thus on Smuts' contemplation of the idea of a league of nations during his time as a member of the War Cabinet: '[U]nder everything, through everything, all the time he was attending meetings at the War Cabinet, flying to this or that part of the war front, making reports on the army, the navy, the air, the diplomatic and war position in Europe, Asia, Africa and America - while he was settling strikes, presiding over committees, deciding anything from how much linseed oil a linoleum factory should be allowed to whether aeroplanes should be built rather than airships - while he was also going through the country to hearten the people with his speeches - a passion, the greatest, moist poignant, most persistent of his life, was growing in him. Smuts had barely arrived in England when he was overwhelmed by the ideal of a League of Nations.' SG Millin *General Smuts volume 2* (1936) 83.

[377] Smuts to T Jones 21 April 1917 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 477. The Imperial War Cabinet discussed this draft resolution on 26 April 1917 and adopted it in a slightly amended form. D Lloyd George *War memoirs of David Lloyd George volume IV* (1936) 1798 as cited in *Ibid*. From the time of Smuts' arrival in England, the idea of an 'international council to guide and control the relations of states' [ED Morel's formulation] . . . 'commanded his deepest attention.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 463. Smuts had 'seized with alacrity upon the opportunity offered by the growing interest in the idea of a League of Nations' to draft this resolution. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 90. According to Beukes, this 'historic' letter, written in Smuts' own hand, marked 'his entry to the arena of international affairs' and 'established his reputation as a leader with a vision for the future.' P Beukes *The holistic Smuts* (1989) 174.

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Even from this 'vaguely worded'[378] draft resolution, formulated within a few weeks of his arrival in England, one can glean four principal objectives that Smuts identified for any Commonwealth proposal regarding the establishment of a league of nations.

Firstly, any such proposal should be practicable. Smuts regarded schemes that were too ambitious or expansive not only as unattainable, but also as positively harmful.[379]

Secondly, the most expedient proposal would seem to lie along the path of a conference system.[380] In articulating this principle, Smuts advocated for a *via media* between the two extreme positions that had emerged in Great Britain during the war - on the one hand the proposals of the radical left for an international legislature supported by an international armed force (a so-called 'super state'), and, on the other hand, the proposals of the reactionary right for a league based on the Concert of Europe and continued naval hegemony.[381] Significantly, by endorsing a conference model, Smuts explicitly rejected the legalistic schemes for international organisation that had garnered such resonant support in the United States (albeit not from President Wilson).[382]

Thirdly, the details of the structure and function of a post-war league should be devised in conjunction with Britain's allies, especially the United States. With keen political acuity, Smuts perceived the necessity of preserving and deepening the Anglo-American

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[378] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 94.

[379] GW Egerton 'The Lloyd George government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 426.

[380] See *Ibid*.

[381] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 83. See also GW Egerton 'The Lloyd George government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 426.

[382] See Chapter 3 (2.2 and 4.2) below. Mazower explains that, generally speaking, when contemplating the form of a post-war international organisation, the British were not as drawn to legalistic schemes as the Americans. As the most powerful state at that time, 'Britain was never inclined to repose too much faith in law and its potential constraints . . .' The British were much more focused on practical considerations, such as the league's functions and bureaucratic form. M Mazower *Governing the world: The history of an idea* (2012) 129.

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alliance into the peace, if the British Empire were to maintain its status as a great power after the war.[383]

Fourthly, the 'scheme to promote future world peace' should be embodied in the peace treaty itself.[384]

For the remainder of the war Smuts returned to these fundamental objectives time and again in his private correspondence, his official memoranda, and his public speeches about a post-war international organisation. To these Smuts added a fifth and sixth aspiration - the cultivation of public opinion and the conclusion of a 'good peace'[385] - on the first occasion that he spoke publicly on the league idea.

3.2 'A real Magna Carta for the whole of humanity hereafter'

Shortly after his arrival in England, Smuts received an invitation to appear on a public platform in support of a league of nations. The occasion was a meeting held under the auspices of the League of Nations Society at Westminster on 14 May 1917. Viscount Bryce presided, and Smuts moved the following resolution:[386]

> That it is expedient in the interests of mankind that some machinery should be set up after the present war for the purpose of maintaining international rights and general peace, and this meeting welcomes the suggestion put forward for this purpose by the President of the United States and other influential statesmen in America and commends to the sympathetic consideration of the British peoples the idea of forming a union of free nations for the preservation of permanent peace.

'[T]he subject [of a league of nations] . . .' Smuts began, 'is probably the most important . . . that has ever arisen upon the horizon of human thought.'[387] However, Smuts forewarned the assembly that he did not have anything 'dogmatic' to say, as the league

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[383] *Ibid*. 'The war had shown the weakness of the British position in Europe in the absence of American support.' *Ibid* 132. Mazower argues that the war had shown stronger ties between Great Britain and the United States to be 'essential for the continued survival of the [British empire] itself,' and in particular to inducing the United States 'to share the "burden of world government" in the peace.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 84 - 85.

[384] As set forth in Chapter 3 (5) below, this principle was a *sine qua non* for President Wilson.

[385] JC Smuts *War-time speeches* (1917) 61.

[386] This resolution and the speech that Smuts delivered on this occasion are reprinted in *Ibid* 54 - 67.

[387] *Ibid* 55.

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idea was 'surrounded by the most perplexing difficulties,' and he had not clarified in his own mind 'the best course to pursue.'[388]

Smuts accentuated a factor hitherto neglected in international relations - public opinion.[389] He agreed with Viscount Bryce that:[390]

> [Y]ou must begin with the hearts of men . . . I am not sure that a passion has not been born for peace after this war which in the end will prove stronger than all the passion for war which has so far overwhelmed us, and that can save us in the long run. That is what I am looking forward to, that this war has not been merely a destructive agency, but that it will prove a creative power . . .'

'If the war has done nothing more,' Smuts said, 'it has . . . done this: it has stamped into the hearts of millions of men and women an intense desire for a better order of things.'[391]

However, Smuts did more than merely underscore the influence of public opinion. In his view 'a strong, healthy, sound public opinion' that would see that 'Governments are kept in order and that diplomats are kept in order' was the 'first and most important condition of future peace.'[392]

Thus, at the time, for Smuts, the cultivation of public opinion was the cornerstone objective that would be the 'best guarantee' of world peace, supported by the auxiliary objectives identified above, *i.e.* those of practicability; a conference system; heightened

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[388] *Ibid* 55, 62. Hancock explains that Smuts accepted the invitation to speak on the express condition that he would not be expected to endorse any of the specific arguments or schemes that had been proposed, but only the general conception of a league. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 463. Smuts also had practical political concerns. In response to a letter from WH Dickinson on behalf of the League of Nations Society thanking him for his speech on 14 May and inviting him to become a Vice-President of the Society, Smuts wrote: 'But I do not like to become a Vice-President as I prefer not to be formally associated with bodies whose activities may possibly assume a political complexion hereafter. I hope to be able to help the cause from my more detached independent standpoint.' Smuts to WH Dickinson 18 May 1917 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 518.

[389] With regard to the influence of public opinion on the Paris peace conference, MacMillan notes: 'The spread of democracy, the growth of nationalism, the web of railway lines and telegraphs, the busy journalists and the rotary presses churning out the mass circulation newspapers, all this had summoned up a creature that governments did not much like but which they dared not ignore. At Paris, it was assumed that negotiations would be conducted under public scrutiny.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 85.

[390] JC Smuts *War-time speeches* (1917) 58.

[391] *Ibid* 55. In another passage Smuts spoke of the 'passion' that the war has 'burnt into millions of minds and hearts that this state of affairs should never be tolerated again.' *Ibid* 59.

[392] *Ibid* 61.

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post-war Anglo-American cooperation; and a league of nations as an integral part of the peace treaty.

In endorsing this 'first and most important' condition of future peace, Smuts resonated the ideology of President Wilson, for whom democracy and public opinion were the 'bedrock of any living political order,' including any future international organisation of nations.[393] Moreover, Smuts' accentuation of the significance of cultivating public opinion denoted his opposition to legalist schemes for the formation of a league, again in consonance with the American President:[394]

> I think that the war has shown us that there is the very greatest danger in merely believing in paper and institutions . . . what we want to see brought about is not merely agreements between the nations, but we must have this change in the hearts of men; we must have this foundation in the hearts of men which will be a good basis for any agreements to rest on, otherwise these agreements and these institutions will be so many scraps of paper again.

Smuts spoke of the 'temptation for reformers to believe in paper and machinery':[395]

> [W]hen we have it in black and white we are apt to think we have attained our end. When we have a law on the statue books we think we have carried our reform, and then we fold our hands and we allow the thing to go by itself. And thereafter it often goes wrong . . . This war has taught us that we are dealing not merely with institutions, or with treaties, or with laws . . .

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[393] M Mazower *Governing the world: The history of an idea* (2012) 126. According to Wertheim, Wilson grounded the legitimacy of a league of nations in its 'supposed correspondence with common consciousness ("public opinion" Wilson called it).' S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 831. Sharp also observes that President Wilson and Lord Cecil had 'great faith in the benevolence of public opinion. Cecil pointed out that: "For the most part there is no attempt to rely on anything like a superstate: no attempt to rely upon force to carry out a decision of the Council or the Assembly of the League. What we rely upon is public opinion . . . and if we are wrong about it, then the whole thing is wrong." Clemenceau was less sanguine: "*Vox populi, vox diaboli*" [the voice of the people is the voice of the devil], he growled.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 62. Of Clemenceau's 'profound cynicism,' Lloyd George once said: 'He loved France but hated all Frenchmen.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 30.

[394] JC Smuts *War-time speeches* (1917) 60. Smuts was disdainful of the Hague Conferences and the Holy Alliance, which he viewed as legalistic schemes that had ended in abject failure. Of the Hague Conferences Smuts said: 'We have had Hague Conferences; we have had peace treaties in large numbers. Our experience has been that whilst we were talking of peace, whilst we were at those conferences, while we were plastering the world with peace treaties, all the time the real danger was growing; all the time the war spirit was rising; all the time there was this arming in the dark, and this scheming which has at last broken out in this great conflict over the world.' *Ibid* 59 - 60. 'The great weakness of the Holy Alliance that followed the Napoleonic wars,' according to Smuts, 'was . . . that it was simply a court to maintain the *status quo* - to ensure that no change took place and that things were maintained in that blissful state in which they were left by the Battle of Waterloo. You know that below that conservative crust of the Holy Alliance there was seething all the great forces which broke forth in the nineteenth century . . .' *Ibid* 66.

[395] *Ibid* 60.

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Smuts did not want to see an international body that would 'merely pass judgment and see that it is carried out,' but one that would 'meet from time to time and revise the situation and liberate those forces of progress which must have an outlet unless there is to be another convulsion.'[396]

Again, in his renouncement of the legalist paradigm for achieving international peace, Smuts echoed the conviction of President Wilson, who was equally distrustful of the machinery of international institutions,[397] and who believed that 'only politicians animated by "public opinion" (yet, standing above the public's actual whims), could discern the international spirit and shepherd its growth.'[398]

By mid 1918, the marshalling of civil society had led to endorsement of the idea for a permanent post-war international body, from almost every arena of British public life -

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[396] *Ibid* 66 - 67.

[397] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 351. Howard-Ellis observes that Wilson had a 'contempt for lawyers and the legal attitude in general, and distrusted what he called "mere machinery."' C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 71. Howard-Ellis cites a plaintive Robert Lansing, President Wilson's Secretary of State, who remarked: 'The other reason for not consulting me . . . was that I belonged to the legal profession. It is a fact, which Mr Wilson has taken no trouble to conceal, that he does not value the advice of lawyers . . . and that he considers their objections and criticisms . . . to be too often based on mere technicalities, and their judgments to be warped by an undue regard for precedent . . . Mr Wilson also said with great candour and emphasis that he did not intend to have lawyers drafting the treaty of peace . . .' *Ibid*.

[398] S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 210. 'President Wilson,' Wertheim continues, 'privileged politicians' judgment above judicial settlement, and "public opinion" above armed enforcement . . . Lawyers had to get out of the way of politicians attuned to popular sentiment, the true agent of historical progress.' S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 213. Mazower summarises Wilson's anti-legalist propensity as follows: 'Wilson wanted to keep power with the politicians rather than give it to lawyers, and he made sure that his League would be a forum for quasi-parliamentary deliberation rather than a judicial court to deliver verdicts.' M Mazower *Governing the world: The history of an idea* (2012) 119. What fundamentally mattered to President Wilson was not 'institutions and legal codes but mental attitudes and values . . . he sought to build something that would grow organically over time to meet mankind's universal aspirations.' *Ibid* 121.

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political parties, labour unions, churches, and the press.[399] Even at this early juncture, in the spring of 1917, with no end to the war in sight, Smuts appreciated the role that public opinion was to play in the proliferation of the league idea.[400]

Smuts used the opportunity of this meeting of the League of Nations Society to engender support for the league idea in an increasingly war-weary British public:[401]

> The losses and sufferings of this war truly baffle description; one cannot contemplate without the profoundest emotion this horror that has come over Christendom, this spirit of self-destruction which has overtaken our so-called civilisation. After all the fair promises, all the fair hopes, all the fine enthusiasm of the nineteenth century, this is what we have come to. It is computed that nearly 8,000,000 people have already been killed in this war - not the old and decrepit, not the unfit, but the best - the very best, those who should have been the natural creators of the new world, they lie buried on the battlefields of civilisation . . .[402]
>
> I am sure this war has burnt into the souls of all this lesson, which perhaps we never should have learned otherwise, the lesson that so far it is possible in human power this thing should never be tolerated again . . . And when Europe rises from her sick bed in a long period of convalescence, as no doubt she will have to do, the germs of many good ideas will be able to develop in her, and let it be our effort to see that among those germs none will develop more strongly and more vigorously than this idea of peace which we are here this afternoon to foster.

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[399] S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 226. See also HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 95. Winkler expounds thus upon the agitation by civil society: 'The idea of a league of nations, slow to develop in the early days of the conflict, soon gained support among many individuals and organizations. As the destructiveness of the struggle became more evident, they were impelled to agitate for the formation of some instrument to banish armed conflict from the world.' HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 96. Regarding the effect of the efforts by civil society on Great Britain's Prime Minister, Wertheim remarks: 'Lloyd George, personally cool toward any international organization save one emerging from inter-Allied organs of wartime cooperation, perceived the public demand for some type of league and pledged to create one in the election of 1918.' S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History 227.*

[400] Millin writes: 'All the things Smuts said that summer afternoon in England are said now by other people. But he said them then, at once, together, and from the depths of war.' SG Millin *General Smuts volume 2* (1936) 86.

[401] JC Smuts *War-time speeches* (1917) 56; 59.

[402] In addition to 'handyman of the empire,' Smuts was becoming known by another unofficial title: 'orator of the empire.' J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 124; FS Crafford *Jan Smuts: A biography* (1946) 136; SG Millin *General Smuts volume 2* (1936) 48. As Crafford states: 'Smuts had few equals in the English-speaking world in the matter of apposite phrasing. His greatest thoughts have always been clothed in inspiring language, often biblical in its simplicity and sonorousness.' FS Crafford Jan Smuts: A biography (1946) 158.

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This meeting proved highly fruitful in its aim of invigorating publicity for the league idea.[403]

The congruity between Smuts' vision for a future league and that of President Wilson was striking. Firstly, by contrast to legalist schemes for a league of nations, Smuts' preference was for:[404]

> [S]omething more elastic, something more flexible, something which will be capable of adapting itself to the very complex circumstances which arise from time to time in our complex European relations . . .

This accorded with President Wilson's organicist conceptualisation of a league of nations as a 'flexible . . . organization that would constantly remould itself around an organically growing world spirit.'[405]

Secondly, in language strongly reminiscent of Wilsonian 'self-determination,' Smuts stated:[406]

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[403] Winkler observes that the meeting 'fulfilled all the hopes of the League of Nations Society. It was widely reported in the press and in some areas elicited very favorable comment. The fact that men of such prominence [Viscount Bryce, Smuts, and the Archbishop of Canterbury] had supported the idea inevitably helped gain a hearing for the project. The May 14 gathering paved the way for a number of similar undertakings.' HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 103.

[404] JC Smuts *War-time speeches* (1917) 62 - 63.

[405] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 343. According to Wertheim, the Wilsonian conception of international organisation, as with any national political system for that matter, was that '[p]olities were organic entities, natural and evolving.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 345. Wertheim continues: 'Wilson saw in the international realm the rudiments of a global polity. The League was to be the embryo that would grow, inch by inch, to maturity.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 343. MacMillan suggests that, to Wilson, the League of Nations 'was so eminently a rational idea, the need for it so widely accepted, that it would grow on its own into a healthy organism.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 87.

[406] JC Smuts *War-time speeches* (1917) 61 - 62. However, Smuts did not explain how 'nationality' was to be determined. It is unlikely, given his loathing of Prussian militarism, that he had in mind the German concept of the *volk* as a 'community of blood and origin.' His concept was most likely akin to the Anglo-American view of the 'nation' as a 'community of organization . . . and of tradition.' See M Pomerance 'The United States and self-determination: Perspectives on the Wilsonian conception' (1976) 70 *American Journal of International Law* 17. In elucidating the ambiguities and inconsistencies in the concept of 'self-determination,' Pomerance quotes Sir Ivor Jennings, who said in 1956: 'Nearly forty years ago a Professor of Political Science who was also President of the United States, President Wilson, enunciated a doctrine which was ridiculous, but which was widely accepted as a sensible proposition, the doctrine of self-determination. On the surface it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who are the people.' M Pomerance 'The United States and self-determination: Perspectives on the Wilsonian conception' (1976) 70 *American Journal of International Law* 17.

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> It is only when we have, as the result of this war and of the peace treaty that will follow it, the establishment of the principle that nations will decide their own fate, that there will be the free consent of nations about their own destiny and their own disposal - it is only then that it will be possible to talk about the maintenance of peace in the future . . . [O]ne of the most important conditions of future peace will be a peace treaty which will . . . establish that nations will no longer as in former years be disposed of by alien statesmen and Governments; that they will not be parcelled and chopped up so as to be divided among the big Powers of the world; that they shall have the chance to decide their own fate. On that basis alone - on that basis of the national - will you be able to build the system of the supernational, the international, which we are aiming at.

Smuts espoused the principle of national self-determination as vital to concluding a 'good peace,' which, in turn, he identified as the second condition for future peace, the first being the cultivation of public opinion.[407]

Thirdly, in accordance with the penchant for an anti-legalist league that Smuts and Wilson shared, Smuts identified, as a third condition of future peace, 'a league or a union of nations with some common organ of consultation on all vital issues.'[408] Smuts advocated for, 'not only a court of law . . . not only a police force . . .' but a 'periodic conference or other institution which will be able to change the situation in civilisation from time to time.'[409]

'The foundation stones of society have been loosened,' warned Smuts, and 'for generations to come there will be a great deal of unsettlement and change.'[410] Therefore, another Holy Alliance would not serve humanity in the peace. '[Y]ou want an institution,' Smuts explained to the gathering, 'which will not be merely of a conservative character with the object of maintaining and preserving peace, because there are sometimes interests which are more important than peace.'[411] After the war there will come a time when 'new creations will be more valuable that the preservation of the *status quo*.'[412]

Smuts also delineated two additional objectives that he had first introduced in his draft resolution to the Imperial War Cabinet in April.

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[407] JC Smuts *War-time speeches* (1917) 61.

[408] *Ibid* 62.

[409] *Ibid* 65 - 66.

[410] *Ibid* 66.

[411] *Ibid*.

[412] *Ibid*.

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Firstly, pursuing a more pervasive Anglo-American cooperation after the war through the creation of a league of nations, should become the 'overriding priority' of British policymakers, in order to entreat the United States into the European balance of power on the side of Great Britain.[413]

Secondly, Smuts reiterated the 'consideration' that the 'fundamental provisions to safeguard peace in future should be included in the peace treaty itself . . .'[414] This was one of Wilson's 'most cherished' ideas, and it was embodied in one of the earliest resolutions of the Peace Conference.[415]

In his address of 14 May 1917, Smuts broached two controversial matters for the first time: sanctions and disarmament. 'It is not merely sufficient for a conference to meet from time to time like an Areopagus to discuss questions,' Smuts stated, 'but there must be a union which has force behind it and which is bound to use that force' when a nation 'has

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[413]S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 226.

[414] JC Smuts *War-time speeches* (1917) 67. In Smuts' view, '[m]illions of men have given their lives in this war, millions more are prepared to give their lives in this war in order to achieve a good peace and to ensure it for the future and I think it would be a proper course that the peace treaty . . . shall contain as an integral part of it the fundamental provisions . . . which will safeguard the future peace of the world.' *Ibid*.

[415] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 39; DH Miller *The drafting of the Covenant volume 1* (1928) 35. A Plenary Session of the 32 states and Dominions gathered at the Paris Peace Conference adopted a resolution, drafted by the British delegation, on 25 January 1919, which read, in part: 'The Conference, having considered the proposals for the creation of a League of Nations, resolved that: . . . (2) This League should be created as an integral part of the general Treaty of Peace, and should be open to every civilised nation which can be relied upon to promote its objects.' FP Walters *A history of the League of Nations volume 1* (1952) 32. Northedge notes that the resolution 'represented a major victory for the American President. It stated in the the most affirmative terms that the "associated nations" . . . were committed to establish the League, that it was to be an integral part of the peace treaty . . . and that the League was essential to the maintenance of the peace settlement . . .' FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 39. MacMillan clarifies that the French government had drawn up an elaborate agenda of its own, one which placed the creation of the League 'well down the list of important issues to be decided.' MacMillan quotes Paul Cambon, the French Ambassador to London, who told a British diplomat: '"The business of the Peace Conference was to bring a close to the war with Germany." The League was something that could be postponed.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 23. According to Sharp, the League was 'last on the French agenda.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 22. Since, for the French, the settlement with Germany came first and the League of Nations 'barely rated a mention,' Wilson, with the support of Lloyd George, rejected the French agenda. M MacMillan *Paris 1919: Six months that changed the world* (2001) 55.

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gone off the rails.'[416] Without 'some sanction, some force,' any arrangement for future peace would remain 'merely talk . . . simply a vision.'[417]

With regard to disarmament Smuts said:[418]

> It is no use trying to prevent war when nations are armed to the teeth. If Governments are allowed with impunity to prepare for war . . . to consolidate all their resources on a military basis with a view to making an attack such as we have seen in the present war, then inevitably you reach a point when not even a League of Nations is sufficiently strong to withstand the deluge.

Smuts regarded the matter of sanctions as a question 'of the greatest difficulty,' and disarmament as 'more difficult than any other aspect of the subject.'[419] As he pledged at the outset of his address, Smuts did not propose any solutions. His recommendations were only to come some 18 months hence when, after earnestly pondering the league idea amidst all his other exigent duties in the War Cabinet, he published *The League of Nations: A practical suggestion*.

Significantly, Smuts' speech at this meeting of the League of Nations Society exemplified the 'difference between his inner and outer persona or tensions between his idealism and his pragmatism.'[420] He portrayed himself as a 'man of blood'[421] in the company of 'the dreamers and the idealists, [and] the visionaries,' on the one hand, and the 'practical men,' on the other.[422] 'It is high time that something were done,' the hard-

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[416] JC Smuts *War-time speeches* (1917) 64. As to 'what force' and 'in what form or measure' the force was to be used, Smuts delineated the proposals then in vogue: '[T]he plan this Society and also the American Society favours is of a more limited character, and would apply force not to prevent war, but to ensure consultation; to ensure inquiry and to afford a certain time for consideration . . . That is the only part which is really sanctioned in the present scheme. It is another question what sort of sanction ought to be applied. Ought nations to go to war at once if it is necessary to keep the peace, or should they go for a more limited application of force, like a financial boycott or a blockade of communications, or a pacific blockade or something of the kind?' *Ibid* 64 - 65. That sanctions would be needed was readily accepted by the Imperial War Cabinet, and it also reflected Foreign Office orthodoxy. P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 141.

[417] JC Smuts *War-time speeches* (1917) 64.

[418] *Ibid* 65.

[419] *Ibid*.

[420] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 47.

[421] With specific reference to Smuts' words on this occasion, Millin remarks: '[H]e chose ironically to class himself, who had been a visionary all his life, with the men of blood.' SG Millin *General Smuts volume 2* (1936) 86.

[422] JC Smuts *War-time speeches* (1917) 65.

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charging theatre commander of the East Africa campaign vented.[423] The subject of a league was 'no longer merely academic, no longer merely Utopian.'[424] 'This tragedy that has come over us calls for action.'[425]

As he did with the draft resolution to the Imperial War Cabinet in April, Smuts commended a practicable design for a post-war league:[426]

> [W]e may fail in our object if we start with too elaborate or too ambitious a scheme . . .you can by trying to achieve too much fail in achieving anything at all, and I must honestly confess that all the schemes that I have heard of so far have failed to carry conviction to my mind that they are practical and that they will achieve the objects we have in view.

By 'the schemes that [he had] heard of so far,' and the 'great literature' that has 'already gathered round this subject of the common institutions . . . for a League of Nations,'[427] Smuts meant the legalist designs put forward by civil society groups in the United States.[428] 'America has been so far from the danger,' Smuts explained diplomatically, 'that she has built up and ideal in the clouds, whereas here in Europe we labour in the trough of the sea.'[429]

Now was the time to bring together, 'not only the idealists,' 'but also practical men of experience, men who know the difficult ways of the world and the bad ways of the world.'[430] If the idealists and the pragmatists could be brought together in a committee 'to thrash out a detailed scheme':[431]

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[423] *Ibid* 56.

[424] *Ibid* 55.

[425] *Ibid* 57.

[426] *Ibid* 62.

[427] Smuts referred to the 'great literature' that 'has already gathered round this subject [of the League of Nations]' specifically in the context of the United States' entry into the war and the time being ripe for 'more ample consideration . . . [of] the details of the subject' and the need for 'an Anglo-American Committee' to be appointed 'to go thoroughly into it.' *Ibid* 63.

[428] See generally S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 210; S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 797.

[429] JC Smuts *War-time speeches* (1917) 63.

[430] *Ibid*.

[431] *Ibid*.

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> [I]t would be possible to have something more practical than anything we have seen on this subject, which might be invaluable when the time for peace negotiations arrives.

Smuts' sanguine vision of a future world at peace shone through clearly in his speech. If all that he proposed on this spring afternoon in Westminster was done:[432]

> [T]hen this war will not have been fought in vain . . . out of the horrors and sorrows of this, probably the greatest tragedy of the world, will have been born a great hope for the future of the world, and in that way this peace treaty which will conclude this war will become a real Magna Carta for the whole of humanity hereafter.

3.3 'The real nucleus of the world government of the future'

On 15 May 1917, ten weeks after his arrival in Britain, Smuts was the guest of honour at a banquet, hosted by both Houses of Parliament, in the Royal Gallery of the House of Lords. He was 'the first Dominion statesman ever to be entertained by the House of Lords.'[433]

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[432] *Ibid* 67. Despite the grave circumstances of the war in which they were uttered, Smuts' remarks were permeated with his characteristic optimism and idealism: 'If the State is a divine institution [as Cicero had said], how much more divine is that institution which we are wishful to create, which will preserve peace, order, and good government not among the citizens of a State only, but among the nations of the world.' JC Smuts *War-time speeches* (1917) 55. 'And I feel sure that if one-hundredth part of the consideration and the thought that have been given to the war is given to schemes of peace, then you will never see war again.' *Ibid* 57. '[W]hen you come to think of creating machinery for lasting peace you will have to bear in mind that the time [the end of the war] . . .will be the most unpropitious possible for the effort . . . On the other hand, I have also this feeling, and I am sure it is the right feeling, that deeper than that has been the good work that the war has done - the creation of a better feeling in the hearts of men . . .' *Ibid* 58, 59. 'I think this war has carried us deep down to the bedrock of honesty and sincerity on which alone any lasting institutions for mankind can be built up.' *Ibid* 60. In the foreword to his *War-time speeches,* dated 31 May 1917, Smuts wrote: 'My hope is that these ideas [to which the speeches in the book 'give rough popular expression'] will more and more mark the goal at which we are consciously aiming through this tragedy of sorrow, and will give us the inner strength and resolution which will enable the Allied Democracies to hold on till victory is achieved. We shall then fight on, not in a dull, desperate spirit for low material ends, but in a conscious, joyous cooperation with the spiritual forces of progress towards a better future for man.' *Ibid* viii.

[433] J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 123. The banquet was held by special permission of the King. 'The rulers of England came,' reports Millin. SG Millin *General Smuts volume 2* (1936) 42. Among those present were 'Milner, Asquith, Bonar Law, Northcliffe, and Winston Churchill.' FS Crafford *Jan Smuts: A biography* (1946) 136. Millin also mentions such luminaries as 'Bryce . . . Crewe . . . Robert Cecil . . . [and] the Lord Chancellor,' among the esteemed guests. Notably, 'Milner sat on Smuts' right hand.' SG Millin *General Smuts volume 2* (1936) 42. Kraus opines that, at this time, Smuts was 'recognized as unparalleled among Dominion leaders, and unsurpassed even by English statesmen.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 264. 'No one questioned his capacity . . .' adds Millin, ' . . . the public had heard or read a series of extraordinary speeches.' SG Millin *General Smuts volume 2* (1936) 42. 'The purpose of the banquet was to demonstrate two things: 'England's magnanimity towards a great enemy, and the magnanimity of that enemy - no longer an enemy - to a great England.' *Ibid*.

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After an introduction by his old nemesis from the Anglo-Boer War and now his comrade-in-arms, Viscount French,[434] Smuts delivered a speech that 'entered history.'[435]

[434] Viscount French lauded Smuts' abilities as a commander in the field: '[D]ay after day, week after week, month after month, our distinguished guest, with every disadvantage in the the way of numbers, arms, transport, equipment and supply, eluded all my attempts to bring him to decisive action, and impressed me far more than any opponent I have ever met with his power as a great commander and leader of men.' French as quoted in JC Smuts *War-time speeches* (1917) 23. He characterised Smuts' campaign in East Africa as 'in the highest degree successful, and as another evidence of General Smuts's great military powers.' French as quoted in *Ibid*. Despite the fact that 'it is in the light of his great military talents that the whole British Empire to-day regards him . . ., ' Viscount French continued, it is also a 'well-known fact that [Smuts] is also a great lawyer and a great statesmen.' French as quoted in *Ibid* 22. It was to French's mind 'an extraordinary fact that some of the greatest soldiers in the world's history have not made the profession of arms the chief study of their lives . . . Our guest of to-night will go down to history with these other great names [Cromwell, Lee, Grant, and Napoleon] as living illustrations of what we mean when we talk of born leaders of men.' French as quoted in *Ibid* 24.

[435] R Kraus *Old master: The life of Jan Christian Smuts* (1944) 264. Crafford described Smuts' speech on this occasion as receiving 'great publicity' in Britain and being 'eulogized throughout the land.' FS Crafford *Jan Smuts: A biography* (1946) 136. Millin writes: 'In England, the expressions "chivalrous," "knightly," "original," "rational," "subtle," "magical," "imaginative," "historical," "classical," and "prophetic" were used to describe Smuts and his speech.' SG Millin *General Smuts volume 2* (1936) 46. Smuts' speech was distributed as a parliamentary paper in Britain and as a pamphlet in the United States. It was translated and distributed in the neutral countries. 'One firm alone of English bookstall contractors took a quarter of a million copies . . .' *Ibid* 42. Beukes states that Smuts' address became 'a landmark in the eventual formation of the Commonwealth.' P Beukes *The holistic Smuts* (1989) 168. According to Lentin, Smuts' scheme for the British Commonwealth of Nations 'became the forerunner of the Statute of Westminster (1931) and a milestone in the political emancipation of the Dominions.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 36. Wilson also notes that millions of copies of Smuts' speech were distributed throughout the world, and that Smuts' ideas formed the basis of the Statute of Westminster. D Wilson *Smuts of South Africa* (1946) 80. Bernstein believes that the ideas Smuts expressed 'set the definitive pattern of the Commonwealth. The concept he elaborated became embodied in the Balfour Declaration of 1926 and in the Statute of Westminster . . .' E Bernstein *The legacy of General Smuts* (1950) 15. Hancock traces Smuts' proposal for 'readjustment of the constitutional relations of the component parts of the Empire' to 'a resolution of the greatest historical importance which Smuts drafted and carried through the Imperial War Conference on 16 March 1917.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 429. That resolution, which formed the basis of Smuts' famous Commonwealth speech two months later, would 'always remain a decisive landmark. From that day onwards, the road ran straight to the Statute of Westminster in 1931, and beyond it to the Commonwealth of the mid-twentieth century.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 430.

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The address was notable for its masterful exposition of the Commonwealth conception.[436] It was on this occasion that Smuts first used the phrase 'British Commonwealth of Nations,'[437] and discussed 'future constitutional relations and readjustments in the British Empire . . .'[438]

Smuts' conception of the British Commonwealth of Nations and a league of nations were closely related.[439] 'The day after he made his first League speech,' notes Millin, '[Smuts] made his great Commonwealth speech.'[440] The British Commonwealth of Nations, as he preferred to call the British Empire, was 'the only successful experiment in international government'[441] that the world had yet seen:[442]

> Yours is the only system that has ever worked in history where a large number of nations have been living in unity. Talk about the League of Nations - you are the only league of nations that has ever

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[436] Leo Amery, who at the time held an important position under Sir Maurice Hankey in the War Cabinet secretariat, and who was 'destined in his later political career [as Secretary of State for the Colonies] to render signal service to the cause of sovereign equality and national freedom in the Dominions and India,' wrote Smuts a letter of 'enthusiastic approbation.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 459. Amery was as much opposed to imperial federation as Smuts was: 'My dear Smuts, I thought your speech tonight magnificent. So much of it was on lines akin to those on which my own mind has travelled . . .' LS Amery to Smuts 15 May 1917 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 517. The liberal peer, Lord Harcourt, was also 'deeply moved by Smuts' speech, which he saw as a great liberal advance upon the theme of an imperial federation with an imperial parliament' promoted by the *Round Table*. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 93. Lord Harcourt wrote to Smuts: 'My dear General Smuts, I would sooner have made your speech of tonight than anything I have ever done or attained in my life! My warmest congratulations and gratitude. Your argument for the hereditary Kingship of the British Commonwealth was unanswerable and of incalculable value. Your policy of consultation and co-operation *plus* complete autonomy is so absolutely the policy I have always pursued and propounded . . . Tonight was the funeral of the *Round Table*.' Lord Harcourt to Smuts 15 May 1917 in *Ibid* 518.

[437] Hancock explains that Smuts and Merriman used the word 'Commonwealth' many years earlier to describe the 'emergent family of equal, cooperative nations which they envisaged.' It was subsequently 'appropriated by "Curtis & Co." [referring to Lionel Curtis and the *Round Table*] to describe the federated super-State of their dreams.' Smuts believed this to be a 'misappropriation' and he 'made up his mind to take the name back again.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 430 - 431.

[438] FS Crafford *Jan Smuts: A biography* (1946) 136.

[439] In his foreword to *War-time speeches*, Smuts explains: 'The speeches all deal either with our war aims or the British empire or the future government of the world. These three subjects are, in my mind, closely related and rest on the the same basis of ideas.' JC Smuts *War-time speeches* (1917) v. Hancock summarise Smuts' 'picture of the peace settlement' as containing 'a League of Nations created in the image of the British Commonwealth.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 457.

[440] SG Millin *General Smuts volume 2* (1936) 83.

[441] Smuts quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 430.

[442] Verbatim press report of Smuts' speech at a banquet in his honour given by both Houses of Parliament on 15 May 1917 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 516. Smuts' speech was also printed in *War-time speeches* in revised form. This thesis refers to both these sources.

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> existed; and if the line that I am sketching here is correct you are going to be an even greater league of nations in the future.

Smuts' ideal of the British Commonwealth of Nations - as of a post-war league of nations - was '[n]ot a super-State, but an international polity of novel design and of great hope for the future of mankind' - essentially an anti-legalistic, organicist collection of independent states founded on moral principles. As Keith Hancock describes Smuts' vision:[443]

> [The British Empire] was founded . . . upon principles which appealed to the highest aspirations of mankind, the principles of freedom and equality; but those principles were still too much obscured by the legal clutter of a past age, with its obsolete theories of Imperial sovereignty and colonial subordination. The clutter would have to be cleared away.

In the past, too much emphasis had been put on 'instruments of government.'[444] As he had done at the meeting of the League of Nations Society, Smuts elucidated the influence of public opinion[445] in the new world order:[446]

> People are inclined to forget that the world is growing more democratic and that public opinion and the forces finding expression in public opinion are going to be far more powerful than they have been in the past.

Probably the clearest enunciation of Smuts' decidedly anti-legalist framework for a future league of nations, is to be found in the foreword of his *War-time speeches*, written two weeks after his 'great speech about the Commonwealth,'[447] in which he explicitly invoked the British Commonwealth:[448]

> The method of subjection by force [in this context Smuts was referring to Prussian militarism] will have to give way to the method of co-operation on the basis of freedom. This ideal of a free co-operative basis for the future Society of Nations, which would have appeared chimera before the war, is so no longer . . [I]n the British Empire, which I prefer to call (from its principal constituent state) the British Commonwealth of Nations, this transition from the old legalistic idea of political sovereignty based on

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[443] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 430.

[444] JC Smuts *War-time speeches* (1917) 37.

[445] In the foreword to *War-time speeches*, written at the end of May 1917, Smuts reasons that Prussian militarism 'which had drifted from the past like a monstrous iceberg into our modern life' will have to be replaced by 'a new method, based on a powerful and wide-spread public opinion, which will reconcile the individual freedom of States with co-operative machinery . . . for the preservation of peace, and . . . for securing other essential common aims of civilisation.' *Ibid* vi - vii.

[446] *Ibid* 37.

[447] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 459.

[448] JC Smuts *War-time speeches* (1917) vii.

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> force, to the new social idea of constitutional freedom, based on consent, has been gradually evolving for more than a century.

'The elements of future world Government,' Smuts continued, 'are already in operation in our Commonwealth of Nations and will rapidly develop in the near future.'[449]

Just as the imperial ideas originating in Roman law held the reigns of European civilisation for almost two thousand years, so the 'newer ideas embedded in the British constitutional and Colonial system may, when carried to their full development, guide the future civilisation for ages to come.'[450]

To Smuts' mind, that was how the constitutional precepts underlying the British Commonwealth seem to ally with both the 'ideals for which [they were] fighting in this war,' and the 'larger world order which will in future replace the chaos of [the] present international system.'[451]

As with President Wilson, Smuts' philosophical rudiment permeated his expectations for a post-war international organisation to their core.[452] Smuts conceived of the British Commonwealth and a league of nations in holistic terms:[453]

> It is most essential that even in this struggle, even when Europe is looming so much before our eyes, we should keep before us and see steadily the problem of the whole situation. I would ask you not to forget in these times the British Commonwealth of Nations . . . [T]he instruments of government will not be a thing that matters so much as the spirit which accentuates the whole.

The British Empire was once more in a position to consider the problem of its future as a whole:[454]

> When peace comes . . . you have all these cards in your hand, and you can go carefully into the question of what is necessary for your future security and the future safety of the Empire.

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[449] *Ibid*.

[450] *Ibid*. Smuts added that 'some development in the structure of our Commonwealth and the greater equalising of its constituent parts will be necessary before the British precedent could be fruitfully applied to the Society of Nations at large.' *Ibid*.

[451] *Ibid* viii.

[452] See also S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 346.

[453] JC Smuts *War-time speeches* (1917) 29, 37.

[454] *Ibid* 30.

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It was from his organicist conception of the universe, which lay at the core of Holism, that Smuts extracted the essence of his conception of the British Commonwealth and a league. Smuts believed that creative evolution was the most notable change that science had brought about in our world outlook generally.[455] That same creative evolution was at work in the British Commonwealth:[456]

> [W]e are not one State or nation or empire, but a whole world by ourselves . . .We are a system of States, and not a stationary system, but a dynamic evolving system, always going forward to new destinies.

The 'federal solution'[457] found in the United States would never work for the British Empire, which was a 'system . . . comprising a world by itself.'[458] With regard to all the past empires and the United States, the effort had always been towards forming one nation.[459] The basis of the British Commonwealth, however, was entirely different. The fundamental fact to be borne in mind was that:[460]

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[455] 'Smuts saw two main forces operating in all existence, the one growing and developing – evolution – the other binding, forming and formative – Holism – and between the interaction of these two, the patterns of the life are shaped to ever higher forms . . . Holism seems to provide the key to a logical explanation . . . to the riddle of creative growth to ever higher forms.' P Beukes *The holistic Smuts* (1989) 118. Science has shattered the idea that the world was 'ready-made and finished and moving forward as a constant, fixed, rigid entity.' It is instead a growing world, a creative universe, a learning world. The world is in a state of constant flux; there was a constant increase in all directions. JC Smuts *Toward a better world* (1944) 128.

[456] JC Smuts *War-time speeches* (1917) 31.

[457] A 'solution which provides subordinate treatment for the subordinate parts, but one national Federal Government and Parliament for the whole.' *Ibid* 32.

[458] *Ibid* 32 - 33. Commenting on the resolution of 16 March 1917, which he drafted and carried through the Imperial War Conference, Smuts stated: 'If this resolution is passed, then one possible solution is negatived, and that is the Imperial solution . . . the idea of a future Imperial Parliament and a future Imperial Executive . . . Here are, as I say, a group of nations spread over the whole world, speaking different languages, belonging to different races with entirely different economic circumstances, and to attempt to run even the common concerns of that group of nations by means of a Central Parliament and a Central Executive, is to my mind, absolutely to court disaster.' Smuts as quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 430.

[459] JC Smuts *War-time speeches* (1917) 33.

[460] *Ibid* 33. It should be noted that just below the surface of his exalted, magnanimous rhetoric, lurked Smuts' narrow, practical political agenda of advancing the status of the Union of South Africa within the Empire. Smith argues that Smuts arrived in Britain for the Imperial Conference of 1917 'determined to kill any idea of an Imperial Federation being born out of the cooperation of the war effort.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 94. Shortly after his arrival in England, Smuts wrote the following to his wife when discussing his aspirations for his time there: 'I want very much to see that in future our position in the Dominions is improved; I cannot and never shall forget that we were free republics. And I can influence my colleagues of the other Dominions in the right direction.' Smuts to SM Smuts 5 April 1917 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 474.

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> [T]his British Commonwealth of Nations does not stand for standardisation or denationalisation, but for the fuller, richer, and more various life of all the nations comprised in it.

Smuts' exhortations about the British Commonwealth as a dynamic, evolving system that had shed the 'old legalistic ideas' for 'the new social ideas,' were strongly reminiscent of President Wilson's view, that law and institutions may never stifle the extemporaneous growth of society.[461] Stephen Wertheim describes President Wilson's organicist conception of polities as follows:[462]

> Wilson saw in the international realm the rudiments of a global polity. The League was to be the embryo that would grow, inch by inch, to maturity . . . Polities were organic entities, natural and evolving. They must not be artificially constructed through the legislation and enforcement of abstract rules.

Similar to President Wilson, whose internationalism had a distinct moral foundation,[463] Smuts believed that the British Commonwealth was grounded on moral principals. 'Smuts believed the Commonwealth to have its roots deep down in the soil of British freedom,' attests Hancock.[464] The Empire, Smuts argued, was founded upon 'the highest aspirations of mankind, the principles of freedom and equality'[465]:[466]

> [I]t seems to me that there is only one solution [to the question of the future government of the Commonwealth], and that is a solution supplied by our past traditions - the traditions of freedom, self-government, and of the fullest development of all constituent parts of the Empire.

These sentiments were echoed, in distinctly Wilsonian terms, in Smuts' vision for a league of nations:[467]

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[461] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 345.

[462] *Ibid*.

[463] Wertheim points out that Wilson is 'widely credited with injecting moral considerations into American foreign relations.' *Ibid* 344.

[464] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 431.

[465] *Ibid* 430.

[466] JC Smuts *War-time speeches* (1917) 33 - 34.

[467] *Ibid* vi. From the time of his arrival in England in March 1917, the theme of morality infused Smuts' discourse on war aims, the British Commonwealth and a league of nations. For example, in the foreword to his *War-time speeches*, Smuts wrote: 'The military aspects of the war so absorb our attention that we are apt to forget the still more important moral aspects, and to overlook the fact that the suffering of such multitudes is slowly but surely working a great psychological change, which will lead to results far beyond any that were contemplated at the beginning of the war . . . we should not aim merely at a military victory, but still more at such a moral victory as will become a steadfast basis for a new order of things.' *Ibid*.

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> If we are to achieve the permanent destruction of that military Imperialism which has drifted from the past like a monstrous iceberg into our modern life, we must create a new temperature, a new atmosphere for Democracy, and strengthen the forces of freedom and national government and self-development at the same time that we work for the free co-operation of the nations in future, in pursuing the common ideals of a peaceful civilisation.

Smuts concluded his address on an elevated note as follows:[468]

> I believe, I verily believe, that we are within reach of priceless, immeasurable good, not only for this United Kingdom and group of nations to which we belong, but also for the whole world. It will depend largely on us whether the great prize is won in this war, or whether the world will once more be plunged into disaster and long years of weary waiting for the dawn. The prize is within our grasp if we have the strength of soul to see the thing through until victory crowns the efforts of our brave men in the field.

Having established his belief in a league of nations to form a central part of the peace treaty to end the war, Smuts 'threw himself into the task of winning the war.'[469] Prime Minister Lloyd George and the War Cabinet utilised his talents on many fronts and in a variety of ways.[470] However, for 18 months and amid all his other activities, the idea of a league of nations continued to churn in his mind.[471]

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[468] JC Smuts *War-time speeches* (1917) 37 - 38.

[469] P Beukes *The holistic Smuts* (1989) 175.

[470] See Chapter 2 (2) above.

[471] P Beukes *The holistic Smuts* (1989) 175.

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3.4 'The greatest creative effort of the human race in the sphere of political government'

On 12 November 1918, the day after the Armistice of Compiègne, Smuts wrote to his Quaker friend, Margaret Gillett, that he was going to host a banquet for a number of American newspaper editors the next evening:[472]

> Wilson has made a very good speech and anticipated much that I wanted to say at the Banquet where I entertain a number of American editors tomorrow night. However, I shall have my say in my own way, however poor it is.

With the assembled newspaper editors from across the Atlantic, Smuts shared what, to his mind, was 'the greatest, most fruitful fact of this great world crisis: the coming together of Europe and America.'[473] As has been shown above, Smuts believed the forging of enduring post-war bonds between the British Empire and the United States to be of cardinal importance to the preservation of the Empire.

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[472] Smuts to MC Gillett 12 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* 5 - 6. The banquet was actually not on the next evening, but on 14 November 1918. In this letter to Margaret Gillett, Smuts made the following cryptic, yet telling, statement: ' . . . God knows my heart is in the great causes.' *Ibid*. It is telling for the insight it provides into Smuts' complex personality. 'Smuts gives his passions to causes', affirms Millin, '[h]is personal relationships are founded on a sense of duty.' SG Millin *General Smuts volume 2* (1936) 170. Millin explains: 'Smuts avoids social intercourse . . . the gatherings at which he is seen are official not social. He maintains human relationships with a sort of dutiful sentimentality; he observes, even conscientiously, a personal obligation; he will not neglect to visit a sick person, to maintain an old correspondence or answer an essential letter . . . But his passion are for causes rather than people. In the twenty-nine months he spent overseas during the war, away from his home, he found himself comfortable in the households of one or two inconspicuous families, but otherwise he went nowhere and met no one except on matters connected with the war . . . It takes a lifetime in South Africa to know Smuts' fundamental inaccessibility. Men who have been his followers for twenty years appreciate it better than those who meet him for the first time. "You look into those pale eyes of his. 'My dear fellow!' he says cordially. But what is in his mind? What do you matter to him? Does he even hear you? . . ."' *Ibid* 82 - 83.

[473] Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 8.

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Smuts lucidly articulated the geopolitical landscape that would underlie the peace negotiations.[474] 'The old Europe, the old world is dead,' Smuts declared, 'what was left of it by the French Revolution . . . will be swept away in this greatest of all revolutions through which we . . . are . . . passing.'[475]

And, on this theme of their privileged position at a crossroads in history to witness the passing of one age and the dawning of another,[476] Smuts said, in an oft-quoted passage: 'It is not merely that thrones and empires are falling and ancient institutions suddenly collapsing. A whole world order is visibly passing away before our eyes.'[477] The cooperation of America would be essential in the 'building up' of the 'new world [that] is slowly emerging':[478]

> As the coming in of America has been the great turning point of this war, so the collaboration of America in the future peaceful order will be a factor of the greatest significance. It is for the good both of America and the old world that she should henceforth take an active share in the councils of Europe, that she should henceforth bear her fair share in the great burden of world politics, and that she should become jointly responsible with Europe for the new order which will arise . . .

Theirs was not simply an expedient political arrangement to defeat the Central Powers, Smuts emphasised. The British and American people shared a bond of deep-rooted moral principles:[479]

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[474] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 52. Smuts construed the peril in Europe's fragmentation: 'It is more than probable that the future map of Europe will look very different from the pre-war map . . . we shall have to face a new situation in Europe . . . From Finland in the north to Constantinople in the south the map of Europe will be covered with small nations, mostly untrained in habits of self-government, some having in the past suffered political shipwreck on that account, and divided from each other by profound national or racial prejudices and antipathies, and all in a state of destitution. In most there is a resolute minority of alien race making for internal weakness. If we may draw any inference from our experience in the Balkans, we may expect a much more disturbed state in future Europe and more dangers of wars that we have had in the past.' Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 14. 'Against this backdrop of weakness, instability and mutual mistrust was the fact of a German state in the heart of Europe, strengthened by "racial homogeneity" and by "education and political discipline."' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 51 - 52

[475] Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 8 - 9.

[476] Theirs was indeed 'good fortune' to be present in Britain on this 'supreme occasion' [the Armistice]. Smuts, too, was 'glad that I have been privileged to be in this country at the coming of peace and to see the temper and behaviour of this great people at such a time.' *Ibid* 9.

[477] *Ibid* 11.

[478] *Ibid* 9.

[479] *Ibid*.

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> [Y]ou are not only with us, but of us; . . . America and the British Empire are bound together by a common inheritance of peaceful ideals and by the same principles of political freedom and the same regard for the sacred rights of the human personality;[480] and . . . our close co-operation henceforth will form the best guarantee for the future peaceful development of civilization.'[481]

Similar to what he did in his 'great Commonwealth speech,'[482] Smuts expounded upon his vision for a league of nations based on an organicist, anti-legalist, moral paradigm.

Smuts expressly invoked the moral idealism of Wilson, with whose aim of 'a peace grounded on moral principles'[483] he was in full accord. The people of the British Commonwealth entered into the war in a spirit of 'moral idealism,' Smuts declared. And when 'the great American Republic joined us in the struggle,' it was:[484]

> [N]ot only with material weapons but with all the moral reinforcement which came from the splendid vision and moral enthusiasm of President Wilson speaking on behalf of the people of the United States. His was the great vision for a League of Nations and of world organization against reaction and militarism in future . . . It is this moral idealism and this vision of a better world which has up-borne us through the dark night of this war. Through all its ups and downs, its awful setbacks, its harrowing

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[480] For Smuts, the concepts of 'human personality' and 'freedom' were integral to his Idea of the Whole (Holism). Personality was the 'highest whole.' '[T]o be a free Personality represents the highest achievement of which human beings are capable . . . and to realise wholeness or freedom (they are correlative expressions), in the smaller whole of individual life, represents not only the highest of which the individual is capable, but expresses also what is at once highest and deepest in the universal movement of Holism.' Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 408. '[H]uman personality is at the pinnacle of the progressive series of wholes in the evolution of the present universe . . . human personality is the supreme achievement of life.' P Beukes *The holistic Smuts* (1989) 128. Commenting on a review of Bertrand Russell's *History of philosophy,* Smuts rejected the doctrine which analyses experience into its ultimate elements (sense data): 'Unless the holistic factor is introduced into this analytical situation you are left with the raw crude elements. How can you reverence the human personality – and give it the status which it occupies in the preamble of the Charter [of the United Nations] – if personality is but sense-data and sensibilia? The thing is really too absurd to be taken seriously.' Smuts to MC Gillett 6 February 1947 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume VII August 1945 – October 1950* (1973) 122.

[481] Smuts implored the American newspaper editors: 'In this solemn hour let us think . . . of Europe, of broken and bleeding Europe, the mother of our common civilization.' Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 11. 'In this great crisis we are not merely Englishmen or Americans, we feel the call of a common humanity, the pull of those simple human feelings which alone can heal the deep wounds which have been inflicted on the body of civilization.' *Ibid*.

[482] See WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 459.

[483] *Ibid* 464.

[484] Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 10.

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> alterations of hope and fear, we drew strength and courage for the cause for which we are fighting and the great hope for the future.[485]

Smuts conceived of a league born from a 'great creative task' - indeed, the league would be 'the greatest creative effort of the human race in the sphere of political government.'[486] A league of nations as envisioned by Smuts, was the only hope for the survival of the 'organism of civilization':[487]

> This war has shattered to its foundations the old, immobile world. Things are fluid and plastic once more, and capable of receiving a new creative impression.

But what would that impression be? Smuts blamed the Great War not only on 'German imperial ambitions,' but also in equal measure on 'outworn international law and organization.'[488] Therefore, the international state of affairs which resulted from the war called for a 'great move forward in the political organization of the world.'[489]

In Smuts' view, 'President Wilson's programme for a League of Nations for world peace'[490] was that great move forward.

Perhaps because of the deep-rooted, trenchant conflict between his idealism and pragmatism,[491] Smuts was acutely aware that the idea of a league of nations had been looked upon 'more as an ideal than a practical measure':[492]

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[485] 'And now that the victory has been won,' Smuts continued, 'it is alike our duty and our interest to remain faithful to that cause and that hope; to see that our victory does not merely end with the downfall of Prussian militarism, but that the organization be established which will secure us against a recurrence of such disaster in future. *Ibid*.

[486] *Ibid* 10; 14.

[487] *Ibid* 11. And the 'organism of civilization' could only bear a certain strain. Smuts sometimes feared that the strain put on it by the war has brought it 'perilously near the snapping point. The loss in life and property, the mental and physical agony, the accumulated effect of years of underfeeding and downright hunger - all these and more have combined to produce a state of affairs closely bordering on the dissolution of corporate state organization.' *Ibid*.

[488] *Ibid* 15.

[489] *Ibid*.

[490] *Ibid* 12.

[491] See S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 47.

[492] Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 12.

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> Among hard-headed politicians and European diplomatists I fear there has been a tendency to look upon the idea, with a good deal of reserve or even skepticism, as Utopian and not suited to existing conditions of European politics.

The reason for this 'reserve and skepticism,' Smuts surmised, was that the preservation of world peace - 'the function hitherto assigned to the League of Nations' - was 'looked upon as a vain aspiration, on the ground that, human nature being what it is, the prevention of all wars would be impossible.'[493]

However, although the 'prevention of wars and curbing of extreme national passions' would be a league of nations' most difficult function, Smuts pointed out, it would by no means be its *only* function. What the 'hard-headed politicians and European diplomatists' overlooked was the other, 'more practical functions' that a league would soon have to fulfil.[494] Europe was 'broken and bleeding,' and her condition was 'tragic in the extreme.'[495] A coordinated effort in the urgent rationing of food and longer-term rationing of supplies had become a vital necessity:[496]

> In the first place, it will be necessary immediately to create what I have called the organization against hunger, and to ration all those countries where conditions of food shortage threaten disaster. The existing inter-Ally machinery, which is the nucleus of the League of Nations, will undertake this task in the first instance. Moreover, during the period of economic reconstruction after the war, when there will be a shortage of many essential raw materials, the Allies, as well as former neutral and enemy countries, will have to be rationed. For this purpose again the creation of international machinery will be necessary. It is thus clear that we are making straight for a League of Nations which will be charged with the performance of these essential international functions.

From this wider perspective of the deplorable conditions in Europe, and the indispensability of international machinery to, first and foremost, save Europe from imminent disaster, to coordinate efforts for the relief of starvation, and to revitalise

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493 *Ibid*.

494 *Ibid*.

495 *Ibid* 11. 'The exhaustion and suffering of the war has reduced her to a state which cannot but cause the gravest concern to all thoughtful people . . . Do not let us fix our gaze too exclusively on Germany . . . The dimensions of this great tragedy go far beyond Germany.' *Ibid*.

496 *Ibid* 13.

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economies,[497] a league of nations, Smuts exhorted, was 'no longer an ideal or an aspiration, but a sheer practical necessity;'[498] it was no longer 'an idea in cloudland,' but would soon be recognised as a 'necessary organ of future European government.'[499]

During the 18 months between his address to the League of Nations Society in May 1917 and his speech to the American newspaper editors in November 1918, amidst his work on the War Cabinet, Smuts 'brooded over this matter of a League of Nations'[500] and wrestled with the 'problems basic to the translation of an idealistic vision into a working international peace organization.'[501]

That Smuts' conception of a league was taking concrete, practical form was evident from the more delineated scheme that he now presented to the American newspaper editors.

Firstly, as expounded above, the league that Smuts envisaged would fulfil 'other more practicable functions,' in addition to its primary function, which would be to keep the peace in a fragmented Europe with 'even more flashpoints than in 1914'[502]:[503]

> It becomes . . . imperative to create an international organization which will to some extent take the place of the Great Powers which have disappeared and keep the peace among [the] smaller states, even if it is not necessary to supervise their internal policing.

Secondly, the league would 'probably be useful in solving other problems with which the world will be confronted.'[504] Here Smuts had in mind the rudiments of the mandatory

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[497] See A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 52. 'The evils bred by hunger,' Smuts said, 'threaten not merely old institutions but civilization as such. In this hour of victory which was given us for great opportunities we cannot look unmoved at this tragic and pitiable situation. We have saved the soul of civilization; let us now proceed to care for its sick body. As we have organized the world for victory, let us now organize the world against hunger and unemployment.' Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 12.

[498] *Ibid* 13.

[499] *Ibid* 14.

[500] SG Millin *General Smuts volume 2* (1936) 16; FS Crafford *Jan Smuts: A biography* (1946) 157.

[501] JC Smuts *Jan Christian Smuts: A biography* (1952) 198.

[502] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 52.

[503] Speech 14 November 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 14.

[504] *Ibid*.

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system, which he was to develop fully in his pamphlet, *The League of Nations: A practical suggestion*, and which would eventually assume a prominent place in the Covenant of the League of Nations.

It was highly likely, Smuts told the American newspaper editors, that the league may 'depute . . .a particular State to act . . . as the mandatory and on behalf of the League of Nations, who will give her general directions.'[505] No doubt with his eye on German South-West Africa, Smuts was also quick to point out that the conquered German colonies would not be subject to a mandatory system.[506] However, member states of the league could be 'deputed' to hold *other* colonies (*i.e.,* those not claimed by the Dominions) as 'mandatories of the League until the question of their ultimate disposal is settled in the future.'[507]

Although Smuts was at pains to emphasise the 'sheer practical necessity' of a league of nations, his idealism and irrepressible optimism nevertheless shone brightly:[508]

> [The League of Nations] will develop vitality, it will take root and grow; it will be seen to be a beneficent institution; a great volume of public opinion will gradually gather round it; and it will eventually become strong enough to essay that supreme task of preserving world peace for which it was originally intended. It will stand out as the greatest creative effort of the human race in the sphere of political government; and it will then be seen to have justified all the losses and sufferings of this, the greatest tragedy in history.

3.5 'We must from the very start of the conference co-operate with America as far as is consistent with our own interests'

'Armistice Day brought no relief to Smuts,' writes Hancock, 'but added to his burden of work, if that were possible.'[509] In late October of 1918, Lloyd George had entrusted Smuts with two additional responsibilities that now took on a sense of great urgency. He was

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[505] *Ibid*.

[506] The former German colonies were 'quite fairly and properly claimed and will have to be given to the British Dominions which conquered them, and for whose future development or security they are necessary.' *Ibid* 14 - 15.

[507] *Ibid* 15.

[508] *Ibid* 14.

[509] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 495. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49.

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appointed chairman of the War Cabinet's Demobilisation Committee.[510] The Cabinet also tasked him with preparing the outline of the British policy at the peace conference.[511] It is the latter duty that this thesis expounds upon below.

In *Our policy at the peace conference*,[512] Smuts succinctly encapsulated Britain's post-war priorities.[513]

Smuts' idealism could be described as a form of 'liberal internationalism, qualified by "heard-headed *realpolitik*."'[514] This memorandum constitutes a prime example of his 'flashes of generous aspiration,'[515] tempered by political pragmatism. 'Smuts tried to think this problem out on two planes,' explains Keith Hancock. The one plane was that of the old balance of power, which, until it was superseded, remained a fact of international

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[510] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 495; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49; SG Millin *General Smuts volume 2* (1936) 166. Ashamed that was is not able to reciprocate the regular and lengthy letters that his wife had been writing him, Smuts wrote to her in October 1918: '[O]f course, you will understand how my time is taken up with endless activities. I have never been busier, but I like the work and feel that, in this critical time, I can perhaps do a little good for humanity, and so I shall persevere. Now again the Cabinet have asked me to make myself responsible for the preparation of our whole case for the Peace Conference.' Smuts to SM Smuts 22 October 1918 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 681. Again, in mid-November of 1918, Smuts wrote to his wife: 'Now we are preparing for the Peace Conference. I am very busy putting our whole case in order for the Conference; I have been charged with this work by the Cabinet. I am also taking a leading share in all the demobilization work.' Smuts to SM Smuts 14 November 1918 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 5 - 6. A few days later, Smuts wrote to his Quaker friend, Alice Clark: 'I am getting so deep into this demobilization work that I shall not be able to go to the Peace Conference, but I an making all the preparations for those who will attend Areopagus.' Smuts to A Clark 19 November 1918 in *Ibid* 21.

[511] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 495; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 431.

[512] This memorandum is dated 3 December 1918. MacMillan describes it as of his 'dazzling analyses of the world for his British colleagues.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 89.

[513] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49.

[514] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 50. Hancock describes the arguments Smuts made to the Imperial War Cabinet at the end of 1918 thus: 'All this, although it had flashes of generous aspiration, was argued in the language of *realpolitik*.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 499. For an exposition of Smuts' brand of internationalism, which Grant labels 'imperial internationalism,' see K Grant 'The British Empire, international government, and human rights' (2013) 11 *History Compass* 574.

[515] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 499.

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politics.[516] The other was the 'new rule' which Smuts hoped to see established just as fervently as Wilson did.[517]

'Are we going to side with France or America as a matter of large policy?' Smuts asked pointedly.[518] Smuts strenuously advocated aligning with America, rather than France, in the post-war world to keep the balance of power safe.[519] Smuts believed that France would try to keep Germany in a 'state of humiliating subjection,' which would create 'a hopeless atmosphere for future peace and international cooperation.'[520]

Therefore, Britain's 'true line of policy should be to link the two great Commonwealths,' which by their community of language, interests, ideals, and 'all fundamental considerations of policy,' signalled a new epoch in Anglo-American cooperation.[521] The potential benefit that Great Britain could derive from this 'political comradeship' was unbounded:[522]

> For the Dominions this was obviously true: as a great naval power in the Pacific, the United States would become more and more the protector of Australia and New Zealand against the dangers of attack form Asia. For Great Britain it might prove to be just as true: if militarism were ever to revive in Europe, American support might come to mean even more to the British than it had meant during the recent war.

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[516] *Ibid* 498.

[517] *Ibid*.

[518] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 431.

[519] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 498.

[520] *Ibid* 498 - 499.

[521] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 431; M MacMillan *Paris 1919: Six months that changed the world* (2001) 89; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 499.

[522] *Ibid*.

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However, Smuts' position reflected more than balance of power concerns or mere bias against Britain's oldest ally.[523] For Smuts, a league of nations was the indispensable condition for peace and security in Europe.

Smuts was acutely aware that the best opportunity to make the League a reality, lay in convincing those members of the War Cabinet antipathetic to the league idea[524] that cooperation with the United States was vital to the preservation of the British Empire. And, the best way to secure American cooperation, Smuts argued, was to support Wilson's league of nations:[525]

> President Wilson is fighting for a League of Nations. If he can go back from the Peace Conference with this point in his favour . . . he will go a long way to meet us on particular points and help our programme . . . I would therefore try to get America into European politics. It is no use her sitting outside. Let her undertake the burden and feel the responsibility.
>
> We must from the very start of the conference co-operate with America, and encourage and support President Wilson as far as is consistent with our own interests . . . I suggest that we could best

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[523] 'It must be admitted,' concedes Hancock, 'that [Smuts'] judgment of France was unkind.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 498. It was no secret that Smuts distrusted the French. They were rivals to the British Empire in Africa and the Middle East. M MacMillan *Paris 1919: Six months that changed the world* (2001) 89. In Europe, Smuts pointed out to his colleagues in the Imperial War Cabinet, France had been a 'bad neighbour' to Britain in the past, and would 'do her best to remain mistress of the Continent.' Smuts as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49. MacMillan recounts how the French returned Smuts' antipathy, especially after he had inadvertently left some of his confidential papers behind at a meeting in Paris. M MacMillan *Paris 1919: Six months that changed the world* (2001) 89.

[524] Mark Mazower shows how peripheral Smuts' position was: 'In promoting this idea of a league of nations led by Britain and the United States, Smuts had an uphill task. British politicians were traditionally cautious about making permanent international peacetime commitments: some thought all talk of international organization preposterously radical and associated with socialism or the Fabians. Only a minority really believed in it. This became clear in early 1917, when Maurice Hankey, the powerful secretary of the Imperial War Cabinet, drew up the options . . . In Hankey's words, the British could choose after the war between: (1) "some sort of International Organisation, such as a league to enforce peace"; (2) "a league of the character of the Concert of Europe formed after 1815"; (3) "reversion to . . . the balance of power." Hankey and the conservatives regarded the first option, which was close to what Smuts and many lobby groups wanted, as a horrible American idea to be avoided at all costs . . .' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 39. Egerton also illustrates that: 'Conservatives like Bonar Law, Curzon, Chamberlain, and Balfour, together with realists like Churchill and Hughes, who doubted the viability of any collective system, were manifestly unwilling to make the potential sacrifices of national sovereignty that such a system necessarily implied.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435; See also P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 144 - 145. There was much 'loose talk' in military and naval circles hostile to the league idea. According to Churchill, at that time Minister of Munitions and a former First Lord of the Admiralty, a league of nations 'was no substitute for the British fleet.' Churchill as quoted in *Ibid* 434, 433. Imperialists such as Amery dismissed Smuts' proposals for a league of nations as 'moonshine.' Amery as quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 460.

[525] Smuts quoted in SG Millin *General Smuts volume 2* (1936) 170 - 171; See also G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 971.

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> signalise that co-operation by supporting President Wilson's policy of a League of Nations, and indeed by going further and giving form and substance to his rather nebulous ideas . . .

In support of the American President, Smuts advocated, as he had done throughout the war, that the establishment of a league of nations should be 'at the heart of the Conference agenda.'[526]

That Smuts' ideal was a league of nations is beyond cavil. That is clear, even from this memorandum in which Smuts set out to convince the Imperial War Cabinet to join forces with Wilson for the sake of Britain's self-interest:[527]

> The extraordinary situation created by the end of this war and the break-up, on an unprecedented scale, of the old political system of Europe calls imperatively for the League of Nations as the foundation of the new policy of Europe . . . The League supplies the key to most of the new troubles . . .

Similar to Wilson, Smuts genuinely saw the league as 'not merely a formula, but a real substantive part of our future international system . . .'[528] However, it was certainly not beyond this 'most realistic of idealists'[529] to steer his conservative colleagues towards his ideal through dexterity of argument couched in the language of *realpolitik*. Millin states:

> [Smuts] saw . . . only the League. He wanted the League to attach America to England: and he wanted his colleagues to believe the League could attach America to England: he wanted, in short, the League.

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[526] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49.

[527] Smuts quoted in SG Millin *General Smuts volume 2* (1936) 171.

[528] Smuts quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 49 - 50.

[529] M Mazower *Governing the world: The history of an idea* (2012) 132.

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CHAPTER 3

'THE LEAGUE OF NATIONS: A PRACTICAL SUGGESTION'

1. 'A short sketch, hastily written at the last moment, and amid other pressing duties'

Smuts submitted his letter of resignation from the War Cabinet to Lloyd George on 14 December 1918, as polling began in the general election in Britain.[530] Smuts' robust constitution fell victim to the *influenza* pandemic of 1918.[531] It was while convalescing at 102 Banbury Road in Oxford, the home of his Quaker friends, Margaret and Arthur Gillett, and while he was 'withdrawn from world events,'[532] that Smuts finalised his pamphlet on the league of nations on 16 December 1918.[533]

The next day, Smuts wrote to Margaret Gillett:[534]

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[530] In his letter of resignation to Lloyd George, Smuts stated: 'My dear Prime Minister, Now that the elections are over I must ask you to release me from further service on the War Cabinet. I would have taken this step earlier, but while other Ministers were preoccupied with the elections I thought it necessary to carry on my work, especially as Chairmen of the Cabinet Committee on Demobilization. Now, however, that will no longer be necessary.' Smuts to D Lloyd George 14 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 30. In a letter of 17 December 1918, Smuts informed his wife that he had resigned from the War Cabinet the previous week because he 'did not want to stay on now that the war is over.' Smuts to SM Smuts 17 December 1918 (translation) in *Ibid* 30. It had apparently always been the understanding that he would remain in the War Cabinet only until the war was over. SG Millin *General Smuts volume 2* (1936) 166. Crafford opines that Smuts resigned from the War Cabinet and various committees, giving up also the chairmanship of the Cabinet Committee for Demobilization, because he 'needed all his time to prepare for the struggle that lay ahead, for he was only too well aware of the fact that powerful forces were gathering their strength to operate against the accomplishment of a sane peace, forces of destruction whose challenge had to be accepted.' FS Crafford *Jan Smuts: A biography* (1946) 156.

[531] However, as Hancock observes, illness did not dampen his 'zest for work and life; indeed [it] seems seldom if ever to have had a depressive effect upon him and there were times . . . when it positively stimulated his creative energy. Besides, it was not his habit to fall into nervous collapse even after his fiercest spasms of effort and there is evidence in his letters that his health began to improve after he had finished his paper on the League.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 503.

[532] *Ibid*.

[533] This was the same day Smuts' resignation from the War Cabinet was announced. SG Millin *General Smuts volume 2* (1936) 168. Smith insinuates that the fact that Smuts dated his pamphlet 16 December was significant: '[T]he idea of calling the constitution of the proposed league the covenant was in vogue by that time.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 94 - 95. There is, however, no evidence that Smuts attached any significance to the date of 16 December as far as his pamphlet was concerned.

[534] Smuts to MC Gillett 17 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 27 - 28.

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> I managed . . . to finish the pamphlet and it will appear in the first week of January. In the meantime I am having it printed and circulated as a Government paper in the inner circle.[535]

The League of Nations: A practical suggestion was 'characteristic of Smuts' industry and drafting skill.'[536] What Smuts modestly described as a 'short sketch . . . hastily written at the last moment, and amid other pressing duties, in view of the early meeting of the Peace Conference,'[537] was in fact a 71 page treatise[538] that received 'wide publicity and became famous overnight.'[539]

His 'intense mental activity,' which expressed itself in the course of the previous 18 months in speeches, memoranda, and letters, 'were . . . codified in a great State paper on the League of Nations.'[540] Smuts wrote it, in all likelihood, at the behest of Lloyd George.[541]

His object in writing the pamphlet was threefold, Smuts declared in the foreword.[542] Smuts reiterated some of the objectives that he had first identified in April of 1917, when

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[535] The original title of the document, as it was printed and circulated within the government in mid-December, was *League of Nations: A programme for the Peace Conference* (16 December 1918 Cabinet Paper P44, Cab 29/2). In January 1919, when Smuts published it as a pamphlet, he changed the title to *The League of Nations: A practical suggestion*. Under this title it was also reprinted in DH Miller *The drafting of the Covenant volume 2* (1928) 23 - 60. This thesis also refer to this document by the latter title.

[536] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970.

[537] JC Smuts *The League of Nations: A practical suggestion* (1918) v.

[538] A 'parliamentary paper . . .' is how Millin describes Smuts' pamphlet. SG Millin *General Smuts volume 2* (1936) 168.

[539] FS Crafford *Jan Smuts: A biography* (1946) 158. Smuth notes that Smuts' pamphlet enjoyed 'immediate and widespread popularity.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97. Egerton likewise comments that 'Smuts' plan attracted major official attention and public support.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 434.

[540] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 500. Potter reports that Smuts' pamphlet was also circulated privately in mimeograph form among the leading representatives at the Paris Peace Conference. PB Potter 'Origin of the system of mandates under the League of Nations' (1922) 16 *The American Political Science Review* 565 n3.

[541] Lentin asserts that: 'Earlier ideas for a League had been drafted by Lord Robert Cecil and later by Lord Phillimore . . . But Lloyd George had asked Smuts to look at the matter afresh and to produce the blueprint for a coherent and comprehensive scheme.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 52. Likewise, Curry states: 'Since none of th[e] semiofficial schemes, British or French, appeared entirely acceptable, the Prime Minister appealed to Smuts, whose abilities and idealism he respected, to prepare another. The result was the *Practical Suggestion*, made public by the British government on December 16, 1918.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970.

[542] JC Smuts *The League of Nations: A practical suggestion* (1918) v.

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he had submitted his draft resolution on the league idea to the Imperial War Cabinet, and in all his speeches and memoranda on that topic since: (i) the generation of public opinion, (ii) the advancement of a practicable scheme, and (iii) the placement of the league at the very forefront of the agenda of the peace conference:[543]

> In the first place I wish to help in the formation of public opinion . . .
>
> In the second place, the discussion on the League of Nations has proceeded far too much on general or academic lines . . . To combat this impression [that the league is not really a matter of practical politics] I have drawn in rough outline what appears to me a practical, workable scheme.
>
> In the third place . . . the ordinary conception of the League of Nations is not a fruitful one . . . a radical transformation of it is necessary. If the League is ever to be a success, it will have to occupy a much greater position and perform many other functions ordinarily assigned to it . . . the League should be placed at the very forefront of the programme of the Peace Conference, and be made the point of departure for the solution of many of the grave problems with which it will be confronted.

2. 'An ever visible, living, working organ of the polity of civilization'

Smuts' pamphlet further expounded upon the ideas that he delineated in his speech to the American newspaper editors on 14 November 1918.[544] In 21 propositions, amplified by paragraphs of explanation and comment, *A practical suggestion* elucidated the practicability of, and laid out a complete constitutional scheme for, a league of nations.[545] Smuts divided his pamphlet into three parts: (i) the position and powers of the league (articles one through nine);[546] (ii) the constitution of the league (articles 10 through 14);[547] and (iii) the league and world peace (articles 15 through 21).[548]

Conceptually, one can trace a number of themes that run through *A practical suggestion*.

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[543] *Ibid* v - vi.

[544] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 53.

[545] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970. Hunter Miller comments that the format of *A practical suggestion* was 'somewhat inconvenient for comparative reference as the draft Articles are interlarded with the comment; this argument or comment of General Smuts, which surrounded his textual proposals, is written in a moving and appealing style; tending indeed to disarm criticism of the text of the Articles suggested. DH Miller *The drafting of the Covenant volume 1* (1928) 34.

[546] JC Smuts *The League of Nations: A practical suggestion* (1918) 7 - 30.

[547] *Ibid* 30 - 46.

[548] *Ibid* 46 - 71.

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2.1 Idealism and pragmatism

A practical suggestion, as the title would suggest, was an attempt by Smuts to bridge the gap between the pragmatist and idealist elements within his own mind.[549] FP Walters writes:[550]

> Here, in language worthy of Milton or of Burke, were high idealism, acute political insight, a profound understanding of the hopes and sentiments of the rank and file of soldiers and civilians, clear and practical administrative planning.

Smuts was keenly conscious of presenting a 'practical, workable scheme.'[551] Throughout his pamphlet, Smuts took great pains to punctuate the practicability of his proposal:

> My object is to sketch a scheme which will be workable in practice and which, while preventing a scramble among the powers for loot, will not be so far in advance of the existing political practice of Europe as to make cautions statesmen reject it at once.[552]
>
> Above all it [the constitution of the league] must be practical and be so devised as to be a real working order of government.[553]
>
> We want a league which will be real, practical, effective as a system of world-government.[554]
>
> Whatever its imperfections, I hope it has shown that the project is not only workable, but necessary as an organ of the new world order now arising.[555]

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[549] See WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 500.

[550] FP Walters *A history of the League of Nations volume 1* (1952) 27.

[551] JC Smuts *The League of Nations: A practical suggestion* (1918) v.

[552] *Ibid* 27.

[553] *Ibid* 31 - 32.

[554] *Ibid* 32.

[555] *Ibid* 70.

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In proposing his conference-based league idea,[556] Smuts attempted to strike a practicable balance between a world Leviathan, or 'super-sovereign,'[557] on the one hand, and a mere 'ineffective debating society' on the other.[558]

Considerations of practicability aside, however, Smuts' pamphlet was 'inspired by a new conception of what the League could be'[559]:[560]

> [M]y reflections have convinced me that the ordinary conception of the League of Nations is not a fruitful one nor is it the right one, and that a radical transformation of it was necessary. If the League is ever to be a success, it will have to occupy a much greater position and perform many other functions besides those ordinarily assigned to it. Peace and War are resultants of many complex forces, and those forces will have to be gripped at an earlier stage of their growth if peace is to be effectively maintained.[561]

This is the very same idea that, some 25 years hence, would prompt Smuts to call for the inclusion of human rights in the Preamble to the Charter of the United Nations.

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[556] 'Government by consent of the governed is our formula . . . We shall likewise have to abandon all ideas of federation or confederation . . . We are inevitably driven to the Conference system now in vogue in the constitutional practice of the British Empire . . .' *Ibid* 32. See also HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 111.

[557] JC Smuts *The League of Nations: A practical suggestion* (1918) 32; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435. HG Wells, for example, in one of his wartime publications argued for 'a scheme of virtual control of the army, navy, air forces, and armament industry of every nation of the world, with full rights of investigation.' Wells as paraphrased in HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 102.

[558] JC Smuts *The League of Nations: A practical suggestion* (1918) 32.

[559] C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 80.

[560] JC Smuts *The League of Nations: A practical suggestion* (1918) v - vi.

[561] Smuts' proposal raised the discussion to a new plane. This 'realistic plan of a leader of unequalled experience in war and in politics - set the goal at which international planning must aim.' FP Walters *A history of the League of Nations volume 1* (1952) 27; 29. As Heyns asserts: 'Others besides Smuts argued at the time that international mechanisms for the settlement of disputes had to be established, backed by the possibility of the use of economic and military sanctions. Smuts' contribution, however, lay in holding that this would not be enough. The task of League, in his view, would not only be to arbitrate in disputes that have arisen; but also to remove, where possible, pre-emptively, the social causes of strife.' CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 331. *A practical suggestion*, in which Smuts argued strongly for a peace-time league of nations, was a 'considerable departure from the past' and went 'far beyond earlier wartime drafts for a mechanism for guaranteeing the peace . . .' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 40 - 41. Mazower refers to *A practical suggestion as* 'the most radical proposal to have emerged openly from the heart of the British policymaking establishment.' *Ibid* 41.

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During the war, Smuts contended, the considerable attention given to the idea of a league of nations proceeded almost entirely from the single, myopic view of the league as a means of preventing wars.[562] Because most people were rather skeptical of the possibility of preventing wars altogether, the league had 'only too often been looked upon as Utopian, as an impractical ideal not likely to be realized while human nature remains what it is.'[563]

Smuts made an impassioned argument for a version of a peacetime league that was a considerable departure from the past, in that it went far beyond earlier wartime drafts merely for a mechanism to guarantee peace.[564] The league should not be viewed only as a possible means of preventing wars, but much more as:[565]

> A great organ of the ordinary peaceful life of civilization, as the foundation of the new international system which will be erected on the ruins of this war . . .

Smuts made short shrift of a prevailing view within British government circles[566] that the league should be nothing more than a revived and remodelled Concert of Europe:[567]

> It is not sufficient for the league merely to be a sort of *deus ex machina*, called in in very grave emergencies when the spectre of war appears . . .

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[562] JC Smuts *The League of Nations: A practical suggestion* (1918) 7.

[563] *Ibid*.

[564] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 40 - 41.

[565] JC Smuts *The League of Nations: A practical suggestion* (1918) 8.

[566] As Mazower observes, on the eve of the Paris Peace Conference, ' . . . support within the British cabinet was lukewarm for anything more than a permanent conference system - a kind of improved version of 1815.' M Mazower *Governing the world: The history of an idea* (2012) 135. Egerton also holds that 'the Conservatives, senior members of the Foreign Office, as well as Kerr and Hankey' envisaged a league as at most 'a complement [to] traditional British strategies whether based on naval hegemony and imperial strength or on a continental commitment to uphold the European balance of power . . .' Egerton as quoted in P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 133; See also GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435 - 436; 440 - 441. As Egerton also points out elsewhere: 'A powerful stream of official thinking . . . favored . . . reliance of the balance of power, together with continued naval hegemony and protection of the independence of the Low Countries.' *Ibid* 426.

[567] JC Smuts *The League of Nations: A practical suggestion* (1918) 8. 'Secret diplomacy,' warned Smuts, 'should as much as possible be avoided, as one of the causes of wars.' *Ibid* 40.

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If the League were to last, 'it must be much more':[568]

> It must become part and parcel of the common international life of States, it must be an ever visible, living working organ of the polity of civilization.

Smuts desired to give an 'essential extension to the functions of the league.'[569] The league had be so central 'in the ordinary peaceful intercourse of states,' that it not only 'becomes irresistible in their disputes,'[570] but also that 'its strong and continuous activities in peace'[571] becomes the 'foundation and guarantee of its war power.'[572]

The solution of the 'vast multiplicity of territorial, economic, and other problems'[573] in international affairs, to be discussed at the Peace Conference, had to be delegated to the league. In fact, the Peace Conference itself should be regarded as the preliminary meeting of the league.[574]

Smuts demonstrated adroit insight into modern European politics. The league, he argued, would also have a 'very real role to play' as successor to the disintegrated Austrian, Russian, and Ottoman Empires.[575] In the past, these empires, their perversions notwithstanding, 'kept the peace among their rival nationalities.'[576] A new system was urgently needed to take their place.[577]

It would be the duty of the league to keep the peace among the 'new [s]tates formed from these nationalities.'[578] But for the active control of the league, Smuts cautioned, the

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[568] *Ibid* 8. See also P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 151.

[569] JC Smuts *The League of Nations: A practical suggestion* (1918) 8.

[570] *Ibid* 8.

[571] FP Walters *A history of the League of Nations volume 1* (1952) 28.

[572] JC Smuts *The League of Nations: A practical suggestion* (1918) 8.

[573] *Ibid* 12.

[574] JC Smuts *The League of Nations: A practical suggestion* (1918) 12; FP Walters *A history of the League of Nations volume 1* (1952) 28.

[575] JC Smuts *The League of Nations: A practical suggestion* (1918) 26.

[576] *Ibid* 25.

[577] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 501.

[578] JC Smuts *The League of Nations: A practical suggestion* (1918) 25.

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'multitudinous discordant states' that had arisen in the wake of these fallen empires - prone, as they were, to 'fly at one another's throats' at the slightest provocation - might actually increase the danger of future wars.[579]

To avert this disastrous possibility, Smuts believed that the league should conciliate the 'numerous sources of trouble and friction' among the new 'small independent nations.'[580] These duties were of course 'quite apart from the more difficult question of the maintenance of future world peace'[581] and, in accordance with the last of Wilson's Fourteen Points, of how to 'guarantee the weak against the strong.'[582] An organisation such as the league was 'imperatively needed' to address these obstacles.[583]

The league should also be utilised for the 'common economic needs' of league members, on the model of the Inter-Allied Councils' rationing of 'food, shipping, coal, munitions, etc.'[584] In addition, 'international administrative bodies responsible for international functions'[585] should be placed under the management and control of the league. 'Questions of industry, trade, finance, labor, transit and communications'[586] had shattered national boundaries, and rendered 'world government' an absolute necessity.[587]

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[579] *Ibid* 25 - 26. 'The internecine history of the Balkan states before 1914' which 'kept the pot boiling, and occasionally boiling over, will serve to remind us that there is "the risk of a similar state of affairs arising on a much larger scale in the new Europe, covered as it will be with small independent states."' Smuts as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 53; JC Smuts *The League of Nations: A practical suggestion* (1918) 25.

[580] *Ibid* 26.

[581] *Ibid* 27.

[582] Smuts as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 53.

[583] JC Smuts *The League of Nations: A practical suggestion* (1918) 27.

[584] *Ibid* 7.

[585] Smuts specifically referred to areas of 'post, telegraph, cables (including wireless telegraphy), air traffic, extradition, copyright, patents, and trade marks, trade and sanitary regulations, statistics, weights and measures, monetary matters, navigation of rivers, private international laws, liquor traffic, slave trade, fisheries, and white slave traffic.' *Ibid* 42.

[586] *Ibid* 43. See also P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 151.

[587] JC Smuts *The League of Nations: A practical suggestion* (1918); FP Walters *A history of the League of Nations volume 1* (1952) 29.

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In summary, Smuts foresaw the economic functions of the league, to not only be confined to 'the prevention of wars or the punishment of an unauthorized belligerent,' but also to extend to 'the domain of ordinary peaceful intercourse between the members of the league.'[588]

The idealist/pragmatist dichotomy within Smuts is further exemplified by his proposal for the mandate system of the league, to which he devoted nearly a third of his argument.[589] To simply revive the old spoils system 'at this most solemn juncture in the history of the world' would drive the 'torn and broken peoples of the world to that despair . . . which is the motive power behind Russian Bolshevism.'[590] The only statesmanlike course, Smuts suggested, was to make the league 'the reversionary in the broadest sense' of the 'shattered' Austro-Hungarian, tsarist Russian, and Caliphate empires.[591] Smuts struck out in a tone of high idealism:[592]

> [T]he smaller embryonic leagues of nations have been swept away, not to leave an empty house for national individualism or anarchy, but for a larger and better League of Nations.

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[588] JC Smuts *The League of Nations: A practical suggestion* (1918) 7 - 8.

[589] Contained in eight of the 21 articles (articles two through nine). DH Miller *The drafting of the Covenant volume 1* (1928) 35; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 502.

[590] JC Smuts *The League of Nations: A practical suggestion* (1918) 11. '[A] repartition of Europe at a moment when Europe is bleeding at every pore as a result of partitions less than half a century old, would indeed be incorrigible madness on the part of rulers.' *Ibid*.

[591] *Ibid* 11; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 501; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 268. Kraus summarises Smuts argument by noting that the supervision and guidance of the new states should fall to the league, and not to the 'white-bled and embittered conquerors.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 268. 'In this *debacle* of the old Europe the League of Nations is no longer an outsider or stranger, but the natural master of the house. It becomes naturally and obviously the solvent for a problem which no other means will solve.' JC Smuts *The League of Nations: A practical suggestion* (1918) 11 - 12; SG Millin *General Smuts volume 2* (1936) 180. Most, if not all, of these territories were believed to be incapable of becoming 'independent states in their own names and in reliance on their own strength.' On the other hand, they could not be divided amongst the victorious powers in light of prevailing views about the inequity of conquest and the right to self-determination. Also, any attempt to divide the spoils may provide too great an opportunity for dissension amongst the Entente powers themselves. International control - in some form and to some degree - was the only solution. PB Potter 'Origin of the system of mandates under the League of Nations' (1922) 16 *The American Political Science Review* 564.

[592] JC Smuts *The League of Nations: A practical suggestion* (1918) 11.

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In a phrase that was to 'captivate' Wilson, Smuts wrote: 'Europe is being liquidated, and the League of Nations must be the heir to this great estate.'[593]

This, of course, did not mean that Smuts intended the league to exert direct sovereign rule.[594] Its task of 'salvage and guidance' could be performed in a myriad of ways according to varying circumstances.[595] Such new states as Finland, Poland, Czechoslovakia, and Yugoslavia might turn to the league for humanitarian and economic aid, but they were 'sufficiently capable of statehood to be recognised as independent States.'[596]

To the territories of the former Russian, Austro-Hungarian, and Ottoman empires,[597] Smuts stated emphatically and repeatedly that the principles of 'no annexations,' 'self-determination,' and the 'open door' should apply.[598] The league would be the universal

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[593] *Ibid* 11; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970; JC Smuts *Jan Christian Smuts: A biography* (1952) 201; FS Crafford *Jan Smuts: A biography* (1946) 158; J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 133. '[W]hy, after all, was this fancy of Smuts so *significant*?,' ponders Millin with reference to this phrase. SG Millin *General Smuts volume 2* (1936) 169 (author's emphasis). Because, she answers, '[i]t happened to be one of those verbal conceptions that have influenced history. For it did more than please Smuts himself and many people in England - it had the fortune to fascinate also Woodrow Wilson.' *Ibid*. Lentin also remarks that Smuts' words 'thrilled and inspired' President Wilson. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 54. Wilson's Secretary of State, Robert Lansing, reported that Wilson was so enthused with Smuts' words that he repeated them again and again. SG Millin *General Smuts volume 2* (1936) 180; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 269.

[594] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 501.

[595] *Ibid*.

[596] JC Smuts *The League of Nations: A practical suggestion* (1918) 16; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 54.

[597] Here Smuts had in mind vulnerable regions on the margins of, or outside, Europe, such as the Transcaucasian or Transcaspian provinces of Russia (Georgia and Armenia), and Middle East territories formerly under Ottoman rule, to wit Mesopotamia (Iraq), Syria, Lebanon, and Palestine. JC Smuts *The League of Nations: A practical suggestion* (1918) 16; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 54.

[598] (3) These principles are: firstly, that there shall be no annexations of any of these territories to any of the victorious Powers, and, secondly, that in the future government of these territories and peoples the rule of self-determination, or the consent of the governed to their form of government, shall be fairly and reasonably applied . . .

(7) That the mandatary State shall in each case be bound to maintain the policy of the open door, or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the League for purposes of internal police.

JC Smuts *The League of Nations: A practical suggestion* (1918) 12 - 16; 23. See also G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970.

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guardian of these territories.[599] It would, however, have the authority to assign these territories to the tutelage of particular powers to act as mandatories or agents of the league.'[600] Although neither the concept of international trusteeship, nor the word

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[599] SG Millin *General Smuts volume 2* (1936) 180;

> (4) That any authority, control, or administration which may be necessary in respect of these territories and peoples, other than their own self-determined autonomy, shall be the exclusive function of and shall be vested in the League of Nations and exercised by or on behalf of it.

JC Smuts *The League of Nations: A practical suggestion* (1918) 17.

[600] (5) That it shall be lawful for the League of Nations to delegate its authority, control, or administration in respect of any people or territory to some other State whom it may appoint as its agent or mandatary, but that wherever possible the agent or mandatary so appointed shall be nominated or approved by the autonomous people or territory.

JC Smuts *The League of Nations: A practical suggestion* (1918) 21. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 5; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161; HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 111.

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'mandate,' originated with Smuts, he gave them a 'quite new application'[601] in *A practical*

[601] C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 71. Smith posits that, '[s]ome writers have erroneously accredited Smuts with proposing a completely original concept, while others have erred in giving him no credit for any originality.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 96. As Wright points out: 'Few inventions . . . whether political or mechanical, are wholly new. The elements of this particular invention [the mandates system] had been evolving for years in the thoughts and writings of administrators, statesmen, jurists, and idealists . . .' Q Wright *Mandates under the League of Nations* (1930) 3. Potter succinctly summarises the causes which led to the founding of the mandates system: 'The modern opposition to territorial conquests and annexations and to the use abroad of colored colonial troops, together wit the modern practice of condominium, the ideal of self-determination, and the policy of the open door in colonial territory, as embodied in the Roosevelt-Root mandate plan for Morocco under the Act of Algericas of 1906, converged, through the writings of the *Round Table* group in England in 1915 - 1917 (especially [JA] Hobson), in the mind of General Smuts in 1917-1918, were then and there reenforced by the Wilson principles for the peace settlement, cast into the terminology of the mandate and formulated in the Smuts "Suggestion" on 16 December 1918.' PB Potter 'Origin of the system of mandates under the League of Nations' (1922) 16 *The American Political Science Review* 583. Ingham also shows that in September of 1916 already, the *New Statesman* had published an article advocating for an international organisation that might, among other duties, hold the captured German colonies in trust, thus providing a guarantee of free and equal economic access to all nations. Ingham continues: 'By the end of [1916], J.A. Hobson, in his *Towards International Government*, had described many of the essential features of trusteeship . . . The Round Table also took up the question of trusteeship . . . In America, too, a variety of ideas had been under discussion, so that by the time Smuts produced his pamphlet the ground had been well-prepared.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 101. It should also be noted that George Louis Beer, the United States colonial delegate at the Paris Peace Conference, in a report of 1 January 1918, dealt at length with the problem of the German colonies, and he elaborated a mandates system using that term: 'Under modern political conditions apparently the only way to determine the problem of politically backwards peoples, who require not only outside political control but also foreign capital to reorganize their stagnant economic systems, is to entrust the task of government to that state whose interests are most directly involved . . . If, however, such backward regions are entrusted by international mandate to one state, there should be embodied in the deed of trust most rigid safeguards both to protect the native population from exploitation and also to ensure that the interests of other foreign states are not injured either positively or negatively.' Beer as quoted in Q Wright *Mandates under the League of Nations* (1930) 22. Smith agrees that '[t]he American, G.L. Beer, might well have discussed the idea of trusteeship of the German colonies with Woodrow Wilson en route to Europe, and J.A. Hobson may well have bandied the term "mandate" about before Smuts used it.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 96. According to Walters, the idea of placing various parts of the world, sovereignty over which was to be changed as a result of the Great War, under the guidance of individual powers, not as part of their national territory, but as territories to be administered in trust under supervision of the league, 'seems to have occurred independently to the Americans and the British. In America it was first suggested by George Louis Beer, the most brilliant member of the group which, under House, prepared preliminary studies for the guidance of the American delegation in Paris. The British Labour party, and the Foreign Office, had hit on the same idea: and their conception was taken up in Smuts' "Practical Suggestion," though in his mind the mandatory system was suitable for the new and inexperienced nations which were breaking away form the Austrian, Russian, and Turkish Empires, rather than for the German possessions in Africa and the Pacific . . .' FP Walters *A history of the League of Nations volume 1* (1952) 57.

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suggestion with a 'dramatic and persuasive exposition' of the mandatory principle.'[602]

Hancock explains Smuts' concept of mandates as follows:[603]

> Thus [the League] could devolve upon State *A* its tutelage powers in territory *X*, subject to such rules as may be laid down to fit the varying needs (including always the need to respect local wishes in choosing the mandatory) of the various territories and peoples.

It is here, comments Hancock, that *realpolitik* enters Smuts' argument. Smuts expected, as a matter of course, a 'fortunate coincidence' to arise between 'British desires to become a mandatory Power in "Territory X" and the desires of the people of that territory to choose Great Britain rather than any other Power.'[604]

The former German colonial territories in the Pacific and Africa were a 'special case' to be resolved in accordance with the fifth of Wilson's 'celebrated' Fourteen Points, *i.e.*, '[a] free, open-minded, and absolutely impartial adjustment of all colonial claims.'[605] According to Smuts, these territories were inhabited by 'barbarians, who not only [could not] possibly

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[602] DS Cheever & HF Haviland, Jr *Organizing for peace: International organization in world affairs* (1954) 282. As stated, Smuts' conception of the mandatory principle included the idea of making the league the successor to the colonial territories of the Russian, Austro-Hungarian, and Ottoman empires, and giving it authority to allocate the mandated territories, thus, in fact, allocating title to these territories to the league. *Ibid*. Wright points out that: 'The term "mandate" was introduced to the Peace Conference by General Smuts who was familiar with the term in the technical sense attributed to it by the Roman Dutch Law of South Africa.' Q Wright *Mandates under the League of Nations* (1930) 376. Millin confirms that to Smuts, with his 'law-trained mind,' the term 'mandate' had particular significance, as it is in Roman law that the concept of *mandatum* originates. SG Millin *General Smuts volume 2* (1936) 169; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 96. After all, FW Maitland, 'the greatest academic lawyer produced by the English universities' for more than a century, told Smuts upon the conclusion of Smuts' brilliant career as a law student at Cambridge (during which Smuts headed the lists in Roman law), that Smuts had it in him to achieve a task which no German could tackle and no Englishman was likely to tackle - he had it in him to become the great Romanist, the Ihering of English law. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 46. *Mandatum* was a *bonae fidei* contract made when a promisor gratuitously agreed to perform a service requested by another, the *mandator*. P du Plessis *Borkowski's textbook on Roman law* (2010) 280. The mandatary must carry out what he undertook, he might not profit, and he must account for receipts and transfer proceeds in the proper form. WW Buckland *A text-book on Roman law: From Augustus to Justinian* (1963) 516. Likewise, Smuts established that the mandatary state should look upon its position 'as a great trust and honor, not as an office of profit or a position of private advantage for it or its nationals.' JC Smuts *The League of Nations: A practical suggestion* (1918) 21. The league might also call for periodic reports from the mandatary state. *Ibid* 22. Kenneth Ingham notes that: '[O]nce again, [Smuts] demonstrated his remarkable powers of synthesis to ensure that ideas which were already widely accepted were presented in a compelling form.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 101.

[603] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 501 - 502.

[604] *Ibid* 502.

[605] JC Smuts *The League of Nations: A practical suggestion* (1918) 15. In other words, these territories would be re-distributed among the victorious powers through the traditional bargaining process. FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 35.

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govern themselves, but to whom it would be impracticable to apply any ideas of political self-determination in the European sense.'[606]

In his analysis of *A practical suggestion*, David Hunter Miller lays bare Smuts' pragmatic political reasons for excluding the former German colonial territories from the concept of mandates:[607]

> Smuts gave some passing acclaim and support to the formula of 'No Annexations;' but did not think that this formula applied to the German colonies. Of course, he said, they should be separated from Germany and, as they were to be outside the Mandates system, the obvious inference or conclusion was that German South-West Africa should become part of General Smuts' country and German New Guinea a part of Australia and so on. The legal ability and political ingenuity of Smuts were strikingly shown in this program . . .[608]

Smuts' 'political ingenuity,' and his appreciation for the dictates of *realpolitik,* are further illuminated by his proposed disposition of Alsace-Lorraine. Just as the German colonies in Africa and Pacific were a 'special case,' so, too, was Alsace Lorraine 'clearly distinguishable in principle.'[609] If this territory was annexed to France, it would be a case of 'disannexation,' Smuts claimed, a *restitutio in integrum* on 'moral and legal grounds' of what Germany so 'violently and wrongfully' took from France in 1871.[610]

However, history speaks to the fact that there was hardly a country at that time that could not make out at least a colourable claim that it had territory 'violently and wrongfully' taken from it at some time by another, and that it therefore was entitled to restitution of territory according to the special principle of 'disannexation' that Smuts laid down with regard to Alsace-Lorraine.

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[606] JC Smuts *The League of Nations: A practical suggestion* (1918) 15. See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 35; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970.

[607] DH Miller *The drafting of the Covenant volume 1* (1928) 36.

[608] MacMillan also comments that 'Smuts had carefully avoided . . . discussing mandates for Germany's former colonies in Africa (This was deliberate; he was determined that his own country should hang on to German Southwest Africa).' M MacMillan *Paris 1919: Six months that changed the world* (2001) 89.

[609] JC Smuts *The League of Nations: A practical suggestion* (1918) 14.

[610] *Ibid* 14 - 15. Alsace-Lorraine's restitution to France, Smuts posited, would only be territorial annexation in a secondary sense. It would satisfy, and not violate, the moral sense of the world. *Ibid* 15. See also G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 970.

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Rather than satisfying the 'moral sense of the world,' Smuts attempted to satisfy the French, as he very well knew that France would never agree to any peace settlement pursuant to which Germany retained this territory.[611] If Smuts wanted to see his ideal realised of a league of nations as an integral part of the peace treaty, this was a pragmatic political concession that had to be made.

Despite Smuts' overt attempts to present a 'practical proposal' to the world, and his consciousness of the concerns of *realpolitik* - especially to ensure American participation in the league and the future of Europe, and pandering to the French with regard to Alsace-Lorraine - he nevertheless retained his idealistic stance:[612]

> The greatest opportunity in history would be met by the greatest step forward in the government of man. On the debris of the old dead world would be built at once the enduring Temple of future world government. The new creative peace world would come to us, not as a fleeting visitant from another clime, but out of the very ruins of our own dead past. In that way the most exalted position and the most responsible and beneficent functions would be entrusted to the new organ of world government.

Smuts brought *A practical suggestion* to a close with the following passage:[613]

> For there is no doubt that mankind is once more on the move. The very foundations have been shaken and loosened, and things are again fluid. The tents have been struck and the great caravan of humanity is once more on the march. Vast social and industrial changes are coming . . . A steadying, controlling, regulating influence will be required to give stability to progress . . . Responding to such vital needs and coming at such a unique opportunity in history, it may well be destined to mark a new era in the government of man . . .

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[611] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97.

[612] JC Smuts *The League of Nations: A practical suggestion* (1918) 30 - 31.

[613] JC Smuts *The League of Nations: A practical suggestion* (1918) 71. According to Northedge, this passage was to enter into 'the folk memory of the League generation.' FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 34.

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2.2 An anti-legalist, organicist league based upon a moral paradigm

Smuts accepted the necessity of the role of the league in the settlement of disputes between states, and imposing economic and military sanctions in reaction to aggression.[614] However, unlike most British, French, and American suggestions for a league system thus far, Smuts advanced a much grander vision of what the league could be.

He warned against the 'new machinery of international Arbitration and Conciliation which emerge[d] as the chief proposal for preventing future wars.'[615] These legalist designs, which gained traction in the United States through the powerful support of such luminaries as former President William Howard Taft and Senator Elihu Root, would be nothing more than 'some new wheel to the coach,' which was not an 'addition worth making,' as it would not 'carry [humanity] any further.'[616]

While the political and social conditions out of which the 'deep-seated evil' of war grew, remained unchanged, it was 'vain to expect any good from new institutions superimposed on those conditions.'[617] Therefore, the 'new institution of peace must not be something additional, something external, superimposed on the pre-existing structure.'[618] Smuts' conception of the league would mean 'much more than new Councils to provide for Arbitration and Conciliation in future troubles.'[619] What was needed was an organic change:[620]

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[614] *Ibid* 60 - 69; See also FP Walters *A history of the League of Nations volume 1* (1952) 28. This was the essence of the Phillimore Report, which Smuts not only accepted, but also incorporated into his own scheme. *Ibid*; DH Miller *The drafting of the Covenant volume 1* (1928) 37 - 38; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50. Northedge summarises the provisions of Smuts' plan in this regard as follows: 'The Smuts plan included the now standard recommendations for pacific settlement: arbitration and conciliation, the distinction between justiciable and non-justiciable disputes, and the principle of the Cecil draft that states resorting to war without complying with the procedures for peaceful settlement would be *ipso facto* "at war" with other members of the League.' FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 35 - 36.

[615] JC Smuts *The League of Nations: A practical suggestion* (1918) 46.

[616] *Ibid* 47.

[617] *Ibid* 46.

[618] *Ibid* 47.

[619] *Ibid*. Walters summarises the gist of Smuts' argument in this regard as follows: 'The political and social life of the world had been shaken to the core: nothing less than a complete revolution in the whole system of international relations would satisfy its needs, and make it possible to guide and regulate the vast changes and upheavals which were yet to come.' FP Walters *A history of the League of Nations volume 1* (1952) 28.

[620] JC Smuts *The League of Nations: A practical suggestion* (1918) 47.

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> Hence it is that I have argued all through this discussion for an inner transformation of international conditions and institutions . . . it must be woven into the very texture of our political system. The new *motif* of peace must in future operate internally, constantly, inevitably from the very heart of our political organisation, and must, so to speak, flow from the nature of things political.[621]

It would be futile to erect an institution whose only function was to settle international disputes after they had arisen.[622]

Smuts was pleading for a 'more fundamental conception of the league,'[623] an 'instrument of government that could deal with the causes and sources of disputes;'[624] in other words:[625]

> [F]or a league whose task will not be to stem the oncoming tide with a broom, but for one which will prevent the tide from flowing at all.

Contrary to the legalist proposals for a league, all of the myriad duties that Smuts envisioned that the league would perform in the international arena, including those of dispute settlement,[626] clearly called for robust and comprehensive institutions:[627]

> Government, like thought or mathematics or physical science rests on certain unalterable forms, categories, or laws, which any successful scheme must conform to. The division of government into legislation, administration, and justice is fundamental in this sense, and should be adhered to by us in devising this new system of world-government.

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[621] 'Then, and not until then, will the impulse to war atrophy and shrivel up, and war itself stand stripped in all its horrible nakedness, and lose all the association of romance, all the atmosphere of horror, which has proved so intoxicating and irresistible in the past.' *Ibid*. See also P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 151.

[622] JC Smuts *The League of Nations: A practical suggestion* (1918) 47.

[623] *Ibid*.

[624] *Ibid* 70. As Heyns puts it: 'Others besides Smuts argued at the time that international mechanisms for the settlement of disputes had to be established, backed by the possibility of the use of economic and military sanctions. Smuts' contribution, however, lay in holding that this would not be enough. The task of League, in his view, would not only be to arbitrate in disputes that have arisen; but also to remove, where possible, pre-emptively, the social causes of strife.' CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 331.

[625] JC Smuts *The League of Nations: A practical suggestion* (1918) 47.

[626] Smuts' anti-legalist stance did not mean that he was against legal processes; he was merely concerned with assigning such processes their rightful place, which, to his mind, meant not making them the linchpin.

[627] FP Walters *A history of the League of Nations volume 1* (1952) 29; JC Smuts *The League of Nations: A practical suggestion* (1918) 33.

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With regard to the organisation of the league, Smuts' proposals were 'more ambitious and more complete' than any other.[628] Smuts made a 'big contribution' to the steadily evolving conception of the league, by proposing that it should consist of a tripartite structure - general conference, a council, and courts of arbitration and conciliation.[629]

Smuts knew that none of the Great Powers would ever join a league in which all members had equal voting power. As the pragmatic politician at the heart of the British policy-making establishment for the past 18 months, Smuts clearly attempted to assuage his Conservative colleagues in the War Cabinet when he asked rhetorically:[630]

> Will Great Britain be prepared to put her fleet at the mercy of a majority vote of all the other states who are members of the league? The question need only be put to see what the answer must necessarily be.

By the same token, however, the 'larger number of . . . intermediate states' and the 'very large number of small states' had to be given a voice and some influence in the league.[631]

Thus, Smuts proposed a general conference of the constituent states, 'which will partake of the character of a Parliament,' to debate issues of general international interest.[632] In this body, all states would be considered equal, and its resolutions would have the force of recommendations.[633] Its functions should be 'carefully chosen' to make it a 'useful body,' and to strike the right balance between it being looked upon, on the one hand, as a 'futile debating society,' and, on the other, as a 'dangerous body whose debates are likely to inflame the slumbering passions of the national populations.'[634]

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[628] FP Walters *A history of the League of Nations volume 1* (1952) 29.

[629] C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 81; M Mazower *Governing the world: The history of an idea* (2012) 133.

[630] JC Smuts *The League of Nations: A practical suggestion* (1918) 34. See also IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 95.

[631] JC Smuts *The League of Nations: A practical suggestion* (1918) 33

[632] *Ibid* 34 - 35.

[633] *Ibid* 35.

[634] *Ibid*.

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Smuts suggested that the initiative for the work of the general conference be left to the council.[635] It would also be incumbent upon the conference to 'favorably [influence] and [educate] public opinion in the constituent countries.'[636]

The 'real work of the league' would be performed by a council of nine member states, responsible for the executive and administrative functioning of the league.[637] Of the nine member states, the Great Powers - the British Empire, France, Italy, the United States of America, and Japan - would be permanent members.[638] Significantly, in accordance with his preferred policy of magnanimity towards the defeated foe, Smuts proposed that Germany should be added to this cadre as soon as she had a 'stable democratic Government.'[639]

The five permanent members of the council should be supplemented by four members in rotation from two panels, the one panel comprising the 'powerful intermediate powers below the rank of Great Powers,'[640] and the other the 'minor states.'[641] Members should send to the council representatives of 'the highest standing and authority,' such as Prime Ministers and Foreign Secretaries (or *locum tenentes*).[642]

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[635] *Ibid*. Smuts contemplated the functions of the conference to generally consist of three types: '(a) General resolutions submitted by the Council for discussion in the Conference which, when passed, will have the effect of recommendations to the national Parliaments, and have no binding legislative character; (b) general measures or codes of an international character dealing with questions like disarmament or world peace or rules of international law which have been adopted by the Council and which they desire to have publicly discussed in the Conference before being passed on for the approval of the national governments; (c) discussion of the reports of the various international administrative committees or commissions working under the Council . . .' *Ibid*.

[636] *Ibid* 36.

[637] *Ibid* 34.

[638] *Ibid* 37.

[639] *Ibid*.

[640] Under the intermediate powers, Smuts had in mind Spain, Hungary, Turkey, Central Russia, Poland, and Greater Serbia, among others. *Ibid* 38.

[641] *Ibid* 37 - 38. 'The advantage of this constitution,' Smuts argued, 'is that the great Powers obtain a majority - although only a bare majority - representation on the council and could not therefore complain that their interests run the risk of being swamped by the multiplicity of the small states. On the other hand, the intermediate and minor states receive a very substantial representation on the league, and could not complain that they are at the mercy of the great Powers.' *Ibid*.

[642] C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 71.

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Smuts recommended that the working arrangements of the council should follow the practice 'so successfully inaugurated at the Versailles conference of Prime Ministers in connection with the Supreme War Council.'[643] It should have a permanent secretariat and staff, and create all the machinery necessary to carry out the functions of the league.[644]

The functions of the council should be to take executive action or control with regard to the league's role as the reversionary, in the broadest sense, of the 'bankrupt estate' left behind by the 'defunct Empires.'[645] The council, therefore, should take direct responsibility for the territories and peoples of the fractioned Russian, Austria-Hungarian, and Ottoman empires.[646]

These territories were 'mostly untrained politically,' and many of them [were] either incapable of or deficient in power of self-government.'[647] Moreover, they were 'mostly destitute,' and would require 'much nursing towards economic and political independence.'[648]

In addition, the council should manage and control international administrative bodies currently performing 'international functions' pursuant to treaty obligations,[649] and to administer and control any property of an international character, such as international waterways, rivers, straits, railways, fortifications, and air stations.[650] The council would

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[643] JC Smuts *The League of Nations: A practical suggestion* (1918) 39; 41. See also P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 151.

[644] JC Smuts *The League of Nations: A practical suggestion* (1918) 41.

[645] *Ibid* 45, 27.

[646] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 54. Smuts was deeply concerned that, if there was going to be a 'scramble among the victors for this loot, the future of Europe must indeed be despaired of.' JC Smuts *The League of Nations: A practical suggestion* (1918) 11. For this reason, Smuts recommended that there be no annexation of these territories formerly belonging to Russia, Austria, and Turkey, and that in future they be governed in accordance with Wilson's principle of self-determination. *Ibid* 15.

[647] *Ibid* 11.

[648] *Ibid*.

[649] *Ibid* 43.

[650] *Ibid* 45.

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also be responsible for formulating 'general measures of international law, or arrangements for limitation of armaments or promotion of world peace.'[651]

Just as the 'grand success of the British Empire' depended on 'having met a new situation in history with a new creation in law,' so, too, the league of nations should grow 'empirically and organically' out of the 'practical necessities' of the post-war world.[652] In words that might just as well have emanated from Wilson, Smuts proclaimed:[653]

> Let us remember that we are only asked to make a beginning, so long as that beginning is in the right direction; that great works are not made but grow; and that our constitution should avoid all rigidity, should be elastic and capable of growth, expansion and adaptation to the needs which the new organ of government will have to meet in the process of the years.

In making his suggestions regarding league organisation, Smuts drew on his experience, not only of the British Commonwealth, but on inter-allied cooperation, as exemplified by the Supreme War Council.[654]

Smuts' conception of the league was entirely consistent with his 'Idea of the Whole,' as the latter was subsequently incarnated into his *Holism and evolution*.[655] Smuts envisioned the league as an evolutionary progressive, creative process:

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[651] *Ibid* 45 - 46. With regard to the 'limitation of armaments or the promotion of world peace,' Smuts made three suggestions, with a role for the council in each such suggestion:

> (15) That all states represented at the peace conference shall agree to the abolition of conscription or compulsory military service; and that their future defense forces shall consist of militia or volunteers, whose numbers and training shall, after expert inquiry, be fixed by the council of the league.
>
> (16) That while the limitation of armaments in the general sense is impracticable, the council of the league shall determine what direct military equipment and armament is fair and reasonable in respect of the scale of forces laid down under paragraph 15, and the limits fixed by the council shall not be exceeded without its permission.
>
> (17) That all factories for the manufacture of direct weapons of war shall be nationalized and their production shall be subject to the inspection of the officers of the council; and that the council shall be furnished periodically with returns of imports and exports of munitions of war into or from the territories of its members, and as far as possible into or from other countries.'

Ibid 56 - 57.

[652] *Ibid* 31.

[653] *Ibid*.

[654] *Ibid*.

[655] See Chapter 10 (2.1) below.

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> The process of civilization has always been towards the League of Nations. The grouping or fusion of tribes into a national state is a case in point . . . Nations in their march to power tend to pass the purely national bounds; hence arise the empires which embrace various nations . . . The principle of nationality became overstrained and over-developed, and nourished itself by exploiting other weaker nationalities. Nationality overgrown became imperialism . . . to-day the British Commonwealth of Nations remains the only embryo League of Nations because it is based on the true principles of national freedom and political decentralization.[656]

> The attempt to form empires or leagues of nations on the basis of inequality and the bondage and oppression of the smaller national units has failed, and the work has to be done all over again on a new basis and an enormous scale. The vast elemental forces liberated by this war . . . have been responsible for this great change. In the place of the great empires we find the map of Europe now dotted with small nations, embryo states, derelict territories. Europe has been reduced to its original atoms.[657]

> The creative process in the political movement of humanity cannot be paralyzed; the materials lie ready for a new reconstructive task, to which, let us hope the courage and genius of Western civilization will prove equal.[658]

> The moment has come for one of the greatest creative acts of history.[659]

Wilson has gained a reputation as the champion of 'global public opinion.'[660] As he had consistently identified from his earliest public utterances regarding the league, Smuts, too, believed that public opinion would have a definitive role to play in post-war international relations:

> The horrors and sufferings of this war have produced a temper in the peoples which must be reckoned with as the fundamental fact of the political situation in Europe today.[661]

> I believe this war has ripened public opinion for a far-reaching change.[662]

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[656] JC Smuts *The League of Nations: A practical suggestion* (1918) 9.

[657] *Ibid* 10.

[658] *Ibid*.

[659] *Ibid* 49.

[660] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 343.

[661] JC Smuts *The League of Nations: A practical suggestion* (1918) 13.

[662] *Ibid* 47.

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Conversely, Smuts also believed that the league might become a 'most powerful and influential factor in moulding international public opinion.'[663] Smuts believed the league capable of teaching the 'enlightened public all over the world' to 'think internationally;' to view public affairs not merely from the 'sectional point of view,' but also from a 'broad human international point of view.'[664]

With the benefit of hindsight and the knowledge of what was to follow, Smuts' supreme optimism for, and confidence in, the future of humankind strikes one as hopelessly idealistic, perhaps even naive. However, according to Millin: 'Smuts' enemies say it is [his] great defect that he does not understand men. He has a great defect. He believes in them.'[665]

Also, as in the case of Wilson, Smuts viewed the Allied powers' role in the Great War and in the peace to follow through a moral lens. 'What has reconciled our Entente peoples to the burdens they were enduring?' Smuts asked.[666] It was their 'consciousness of right . . . their vague hope of a better, fairer world to come.'[667]

This war had been one of 'ideals, a spiritual war.'[668] The people of Europe deserved a peace settlement based on 'universal human principles and the dawning of a better order.'[669] The 'psychological and moral conditions' were ripe for a great change.[670] Smuts concluded *A practical suggestion* in a moral tone:

> Responding to such vital needs and coming to such a unique opportunity in history, it may well be destined to mark a new era in the government of man, and become to the peoples the guarantee of peace . . . and to all the embodiment and living expression of the moral and spiritual unity of the human race.

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[663] *Ibid* 36.

[664] *Ibid*. 'For the first time in history, people will hear great subjects discussed on an international platform, and the narrow national influence of the local Parliament and still more the local press will gradually be neutralized, and a broader opinion and spirit will be fostered.' *Ibid*.

[665] SG Millin *General Smuts volume 2* (1936) 92.

[666] JC Smuts *The League of Nations: A practical suggestion* (1918) 13.

[667] *Ibid* 13 - 14.

[668] *Ibid* 14.

[669] *Ibid*. If peace comes in a return of 'the old policy of grab and greed and partitions,' Smuts warned, 'then the bitterness of the disillusion would indeed be complete.' *Ibid* 27.

[670] *Ibid* 49.

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3. Reaction to Smuts' pamphlet

Keith Hancock contends that the influence of Smuts' pamphlet on the Covenant of the League was 'profound,' and that the paper 'ha[d] been accepted universally as a work of exceptional ability.'[671]

This thesis tests Hancock's assertion in this and the following sub-chapters, by analysing the views of scholars, the reaction of Smuts' colleagues in the War Cabinet proper and Imperial War Cabinet, and the influence of Smuts' pamphlet on Wilson.

3.1 Views of scholars

Perhaps the most effusive praise for Smuts' *A practical suggestion*[672] comes from FP Walters.[673] Walters views the publication of Smuts' pamphlet as one of 'two events of great importance' in league history (together with the appointment of Lord Cecil to take charge of the British delegation dealing with issues relating to the league).[674] Walters continues:[675]

> Smuts' work was from every point of view the climax of all the thought and labour expended on the League idea before the Paris Conference.[676] The schemes of the Phillimore and Bourgeois Committees, the drafts of Wilson and House, were all still kept secret: and the 'Practical Suggestion'

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[671] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 502 - 503.

[672] See generally A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 49 - 50; C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 80 - 82; M MacMillan *Paris 1919: Six months that changed the world* (2001) 88 - 90; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 34 - 36; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 434; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 53 - 56. Webster and Herbert, in their work *The League of Nations in theory and practice*, comment on Smuts' pamphlet as follows: 'This great paper, expressed in cogent and moving language, immediately had a profound effect[; i]t crystallized ideas and aspirations which had been held in many quarters, and made deep impression on both Lord Cecil and President Wilson.' As cited in D Kennedy 'The move to institutions' (1987) 8 *Cardozo Law Review* 874 n90. Kennedy mentions that Smuts' *A practical suggestion* is usually treated as 'exemplary of the plans for an institutionalised peace which gave flesh to Wilson's fourteenth point . . .' D Kennedy 'The move to institutions' (1987) 8 *Cardozo Law Review* 874.

[673] FP Walters *A history of the League of Nations volume 1* (1952) 27 - 30

[674] *Ibid* 27.

[675] *Ibid*.

[676] Alan Sharp is likewise of the opinion that with *A practical suggestion*, Smuts produced perhaps the 'most influential of the pre-Paris drafts.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 49. According to Winkler, Smuts' proposals were 'of equal importance' to those of the Phillimore Committee and Viscount Cecil. HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 110.

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> was therefore the first plan put out to the world by one who held a pre-eminent official position, had played a prominent part in the conduct of the war, and possessed unique experience in military and political affairs.[677]

'But the contents of the pamphlet,' remarks Walters, 'were even more impressive than its source.'[678] 'Here at last' was a proposal for a league of nations 'worthy of the greatness of its subject.'[679] In Walters' view, the purpose, 'and to a greater extent the consequence,' of *A practical suggestion*, was to 'raise the discussion to a new plane.'[680]

According to Mark Mazower, Smuts' 'influential memorandum' was a considerable departure from the past, and went far beyond the earlier wartime drafts for a mechanism for guaranteeing peace.[681] Mazower characterises *A practical suggestion* as 'the most radical proposal to have emerged openly from the heart of the British policymaking establishment.'[682] Its 'genius' was to bind internationalism to 'questions of Atlanticism and imperial cohesion' that the conservative members of the Imperial War Cabinet valued.[683]

FS Northedge states that Smuts made an 'influential contribution to the debate on the future League.'[684] He praises Smuts' pamphlet as:[685]

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[677] 'Smuts had advised on the great issues of the war; it was natural that he would also advise on the peace.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 88.

[678] FP Walters *A history of the League of Nations volume 1* (1952) 27.

[679] *Ibid*.

[680] *Ibid*. Howard-Ellis endorses this view: 'The Smuts' [sic] pamphlet . . . was inspired by a new conception of what the League should be.' Smuts gave 'a quite new application' to the conception of the league as having to occupy a much greater position and perform many other functions than those normally ascribed to the institution. C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 80.

[681] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 40 - 41.

[682] *Ibid*. In *Governing the world: The history of an idea*, Mazower expounds upon what he considers the radical nature of Smuts' pamphlet: 'It was radical on disarmament issues, [and] proposed the tripartite structure of executive council, assembly, and secretariat that was eventually adopted . . . This was much more sweeping than anything Cecil or Phillimore had proposed; indeed, at this time Cecil was still thinking only along the lines of a new Concert . . . It was also more radical than the draft Colonel House himself had drawn up at Wilson's request.' M Mazower *Governing the world: The history of an idea* (2012) 133 - 134.

[683] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 41. 'Smuts's policy offered something for both Milnerites and the idealists: it took internationalism further than most of the former wished to go, but tied it to the preservation and even extension of imperial power.' *Ibid* 41 - 42.

[684] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 34.

[685] *Ibid*.

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> [D]istinguished, as was to be expected, by its inspiring language, much of which has entered into the folk-memory of the League generation . . . and by its magisterial comprehensiveness: Smuts discussed all the central principles of international organisation for maintaining the peace, adding a few of his own and bestowing on each of them an original twist.

George Egerton regards *A practical suggestion* as an 'eloquent and persuasive plea for a league of nations that would underpin the peace settlement and provide the fabric for a true international society in the postwar world.'[686] Keith Hancock states that Smuts' pamphlet was not merely the 'ideal State paper,' in Lloyd George's words, but a 'tract for the times, vibrant with faith and hope.'[687]

David Hunter Miller analyses *A practical suggestion* critically, and in more detail that any other scholar, resulting in a more balanced appraisal. Although he states that '[t]his paper is drawn in very moving language and is very beautifully written,' he is quick to add, having parsed Smuts' language with his lawyer's eye, '[i]ts specific provisions are striking both in regards to what they contain and in regard to what they omit.'[688]

For example, 'almost the whole discussion is of Europe.'[689] Hunter Miller also views Smuts' description of the functions of the council to be in 'language which is so broadly vague as to mean almost nothing.'[690]

In addition, Smuts did not consider the implications of the United States Constitution in proposing, in article 19 of *A practical suggestion*, that league members (specifically the United States, from Hunter Miller's perspective) would be *ipso facto* at war with a transgressor state.[691] Hunter Miller states explicitly that Smuts' proposed article 19 would

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[686] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 434.

[687] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 503.

[688] DH Miller *The drafting of the Covenant volume 1* (1928) 34. It should be added that some of Hunter Miller's points of criticisms are of a legal-technical nature, perhaps overly so. As but one example, Hunter Miller questions Smuts' use of words 'having a technical legal meaning' with 'an apparent disregard of their precise effect, e.g., "jointly and severally" in (18).' *Ibid*.

[689] *Ibid*.

[690] *Ibid* 35.

[691] (19) That the Peace Treaty shall provide that if any member of the League breaks its covenant under paragraph (18), it shall *ipso facto* become at war with all the other members of the League . . . '

JC Smuts *The League of Nations: A practical suggestion* (1918) 63. In this regard Hunter Miller also points out that 'there is no provision as to how it shall be determined whether a covenant under (18) is broken or not.' DH Miller *The drafting of the Covenant volume 1* (1928) 35.

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be void pursuant to the Constitution if contained in any treaty presented to the United States Congress.[692]

Smuts' most striking omission, in Hunter Miller's view, was the complete exclusion of the former German colonies from the proposed ambit of league oversight, as well as from the principles of 'equality' and the 'open door.'[693] As stated, Smuts recommended simply that these colonies be disposed of in accordance with 'the principles which President Wilson [had] laid down in the fifth of his celebrated Fourteen Points.'[694]

Hunter Miller clearly admires Smuts' 'legal ability and political ingenuity' with regard to the mandates proposal. Nevertheless, 'the obvious inference or conclusion' from Smuts' omission was that he intended German South West Africa to become part of his own country.'[695]

'There is no doubt,' declares Hunter Miller with reference to the organisation and constitution of the league, 'the ideas of Smuts made a real advance toward the final solution.'[696]

In scrutinising Smuts' propositions regarding disarmament, Hunter Miller concludes: 'Here his solution was not entirely a happy one, perhaps because he very acutely observed the enormous difficulties of the problem . . .'[697] Hunter Miller also shows that Smuts' recommendations with regard to the settlement of international disputes (articles 18

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[692] *Ibid*. Hunter Miller shares a similar concern with regard to Smuts' proposed article 19 'to the effect that the size of the naval or military contribution to be made by the United States in an *ipso facto* war might be determined not only without the consent of Congress but even against the decision of the United States.' *Ibid*.

[693] *Ibid* 34; 35 - 36.

[694] JC Smuts *The League of Nations: A practical suggestion* (1918) 15.

[695] ' . . . and German New Guinea a part of Australia.' DH Miller *The drafting of the Covenant volume 1* (1928) 36.

[696] *Ibid*. Hunter Miller points out that every plan for a league of nations 'necessarily envisaged a general conference of all the members,' and 'indeed it would be difficult to draw any scheme for a League of Nations without [it].' As such, the 'Phillimore Plan, the House Draft, and Wilson's American Draft' all contained provisions for a general conference of members under one name or another. The idea of 'a smaller representative body' to meet frequently had been suggested in various quarters and 'was, so to speak, in the air.' Although not in the Phillimore plan, the House draft or in President Wilson's American draft, it was suggested in the French plan, and it was also embodied in a draft that Hunter Miller had prepared and provided to Colonel House. *Ibid*.

[697] *Ibid* 37. 'So in his three articles Smuts proposed two impracticable and insufficient measures, namely, the abolition of conscription and the nationalisation of munition factories; he confessed failure as to any general limitation of armament, saying (Article 16) "The limitation of armaments in the general sense is impracticable."' *Ibid*.

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- 22 of *A practical suggestion*) 'were taken almost bodily from the earlier plan for a league of nations prepared by a committee under the chairmanship of Lord Phillimore.'[698] Lastly, Hunter Miller compares Smuts' plan with another earlier league scheme - that of Lord Robert Cecil.[699] The most important differences between these two proposals, according to Hunter Miller, related to the composition of the council and the issue of mandates.[700]

Hunter Miller concludes his critique of Smuts' pamphlet by noting that neither the Smuts nor Cecil plans were 'expressed as coming from [the author] alone,' and the 'ideas of one were not wholly in accord with those of the other.'[701] Thus, neither could strictly be regarded as the official British proposal on the league on the eve of the Peace Conference. However, states Hunter Miller:[702]

> Each of the papers were of very high importance as their respective authors were not only members of the British delegation and statesmen of high rank, but were also to become the British representatives on the League of Nations Commission of the Conference.

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[698] *Ibid* 37. 'There is hardly a phrase in these four Articles of Smuts that is not in the draft of the Phillimore Committee . . .' *Ibid*. This was not a controversial observation, as many scholars have accepted that Smuts adopted and incorporated the Phillimore Committee's recommendations in this regard. See, for example, FP Walters *A history of the League of Nations volume 1* (1952) 28; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50. The proposals for the settlement of international disputes, as contained in the Phillimore Report and Smuts' *A practical suggestion*, had become 'standard' by the time Smuts issued his pamphlet. FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 35 - 36. Hunter Miller meticulously tracks the similarities between the Smuts and Phillimore plans: ' Article 18 of Smuts is almost exactly Article 1 of the Phillimore Plan; Article 19 of Smuts is substantially Article 2 of the Phillimore Plan; Article 19 of Smuts is substantially Article 2 of the Phillimore Plan; Article 20 of Smuts is almost literally Article 3 of the Phillimore Plan; and Article 21 of Smuts is a combination and rewriting of Articles 4, 6, 8, 9, 10, and 11 of Phillimore . . .' DH Miller *The drafting of the Covenant volume 1* (1928) 37.

[699] *Ibid* 38. Hunter Miller mentions that he first received copies of both Smuts' pamphlet and Cecil's memorandum on 19 January 1919.

[700] *Ibid*. With regard to the former, Cecil would have limited the council to the Great Powers only, whereas Smuts had proposed a minority of other powers, one less in number than the Great Powers. And, with regard to the latter, Smuts devoted a large part of his proposal to the idea of mandates, while Cecil's memorandum was completely silent on the subject. *Ibid*.

[701] *Ibid* 38 - 39.

[702] *Ibid* 39.

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3.2 Reaction of British politicians

In some quarters of the British policymaking establishment, the reaction to *A practical suggestion* was favourable. 'My paper has made an enormous impression in high circles,' Smuts told Margaret Gillett.[703] Smuts continued: 'It would have been adopted as our official programme for the Conference but for the objection of [the Australian Prime Minister,] W.M. Hughes.'[704] Smuts' pamphlet was 'officially voted' to be presented to Wilson as an expression of British views.[705]

Lloyd George called Smuts' *A practical suggestion* as 'the ablest state paper he had seen during the war.'[706] In his *The truth about the peace treaties*, the Prime Minister stated:[707]

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[703] Smuts to MC Gillett 27 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 34. Smith states: 'Smuts himself was immensely pleased with its [his pamphlet's] reception and in his private correspondence mentions the official praise it received like a happy schoolboy who has excelled in an examination.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97.

[704] Smuts to MC Gillett 27 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 34. See also IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97.

[705] Smuts to MC Gillett 27 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 34. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 55; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 101. Smuts was highly gratified by the reception of his pamphlet in 'high circles': 'I feel rather pleased, knowing how hard I have fought for these views, to find my efforts have produced some result.' Smuts to MC Gillett 27 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 34.

[706] Lloyd George to Lord Riddell as quoted in FS Crafford *Jan Smuts: A biography* (1946) 158. Crafford relays the conversation between Lloyd George and Riddell as taken down in Riddell's diary, *Lord Riddell's intimate diary of the peace conference and after*: 'Referring to the sentence, "The tents have been struck, the great caravan of humanity is once more on the march," Lloyd George said: "That is very fine." Riddell: "An analogy drawn from Smuts's environment in South Africa. He has been accustomed to see men trekking away, perhaps with no definite objective." Lloyd George: "That is just what occurred to me when I read the sentence."' *Ibid*. Smuts described the reception of his pamphlet by the Prime Minister in a letter to Margaret Gillett: 'I see from the Cabinet Minutes that the Prime Minister called it "one of the ablest state papers he had ever read."' Smuts to MC Gillett 27 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 34. See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 89. Lentin and Egerton quote Lloyd George as saying Smuts' pamphlet was 'one of the ablest state papers he had read.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 53; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 436. Gordon Auchincloss, the son-in-law of President Wilson's confidant, Colonel Edward House, stated in his diary, after meeting with Lloyd George on 26 December 1918: 'Smuts' memorandum had not been entirely approved by the Cabinet but he [Lloyd George] thought very highly of it and endorsed the views expressed . . .' Auchincloss as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 975.

[707] D Lloyd George *The truth about the peace treaties volume 1* (1938) 620.

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> The document [Smuts] turned out is one of the most notable products of this extremely able man. It is pellucid in style, eloquent in diction, penetrating in thought and broad in its outlook. It contains one or two striking phrases which will live in the literature of peace. It is difficult to summarise, for every sentence is full of fruitful suggestion and couched in language of stately impressiveness. This ideal State paper will have its place in history, not only for its intrinsic merit, but as the model on which the Covenant of the League was built.

'I have never read any State Paper . . .' the former Lord Chancellor, Lord Loreburn, wrote to Smuts, 'with anything like the agreement I feel in regard to this of yours.'[708] He believed that Smuts had 'expressed in definite proposals the hopes and aspirations' prevalent in Great Britain, and had 'put in definite shape,' 'with clearness and completeness' the ideas and principles that had been 'floating through my mind.'[709] Lord Loreburn stated:[710]

> This war, terrible as it has been, and irreparable as must be the mischief it has produced, will leave one compensation if your ideas are embodied in the results of the Peace Conference.

Leo Amery, a future First Lord of the Admiralty and Secretary of State for the Colonies,[711] wrote to Smuts on the very next day after Smuts' pamphlet had been circulated within the government. Amery was 'in entire agreement with its two leading ideas,' which he characterised as:[712]

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[708] Lord Loreburn to Smuts 22 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 32. In referring to Smuts' pamphlet as a 'State Paper,' Lord Loreburn trusted that it would be published and circulated as such to all members of both Houses.

[709] Lord Loreburn to Smuts 22 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 32.

[710] *Ibid*. Lord Loreburn also expressed the hope that Smuts would be one of the British representatives at the Peace Conference. If Smuts' pamphlet was published, however, 'I expect that you will have to be there whether you like it or not.' *Ibid*. The former Lord Chancellor offered Smuts two minor points 'not by way of criticism, but by way of helpfulness, due to hopefulness.' Firstly, he suggested that the council might intervene on its own initiative, not only in 'very threatening cases,' as Smuts had proposed, but also if the council viewed a dispute as merely 'serious.' Secondly, Lord Loreburn was in favour of the recommendations of the council always being published, and not only, as Smuts had suggested, 'if either party threatens to go to war in spite of it.' 'This would warn the public against the fire-eaters,' Lord Loreburn believed. *Ibid*.

[711] Hancock states that, at the time, Amery 'held an important post under Maurice Hankey in the War Cabinet Secretariat.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 458. 'It would have seemed inconceivable then,' continues Hancock, 'that the two men could ever become friends, for Smuts was looking for another "John Bright," whereas Amery was a zealous Chamberlainite.' *Ibid*. However, throughout his life Smuts showed himself always ready to modify his judgment of people when the passage of time and his own experience revealed that the labels he had originally hung on them longer fit. *Ibid*. For the many common interests between Smuts and Amery, see *Ibid*.

[712] LS Amery to Smuts 17 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 26.

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> (1) that the experience of the working of the existing League of Free Nations, viz., the British Commonwealth, affords the best guide to the constitution of the League of Nations, and (2) that we cannot leave the areas occupied by the old Central European Empires - Austria, Russia, Turkey - to a mere chaos of conflicting nationalities but must substitute free association for a unity imposed by force.

Where Amery believed Smuts' idea 'required rather further amplification and precision,' was with regard to the area 'covered by Austria-Hungary, Balkans, and Russia.'[713] Smuts ought to make clear, Amery urged, that this area should not only 'be under *the* League of Nations as trustee-in-chief, but should be constituted into one or more Leagues of Free Nations.'[714]

Amery was apparently not aware that his conception of 'the Great Powers . . . sitting as the nucleus of the ultimate League of Nations' being 'responsible for setting up minor Leagues of Free Nations'[715] would not appeal to Smuts, as completely antithetical to Smuts' philosophical tenets. In this regard Crafford explains:[716]

> [T]he idea of a league of nations had a special significance for Smuts. It had very much in common with his philosophy of life . . . Small units must needs develop into bigger wholes, and they in turn again must grow into larger and ever-lager structures without cessation. Advancement lay along that path. Thus the unification of the four provinces in the Union of South Africa, the idea of the British Commonwealth of Nations, and, finally, the great whole resulting from the combination of the peoples of the earth in a great league of nations were but a logical progression . . .

Overall, however, Smuts' pamphlet failed to persuade those in key decision-making positions. Smuts' stirring rhetoric may have 'momentarily transported' the Prime Minister, Lord Loreburn, and Amery, but it alarmed the Foreign Office.[717] At a 'crucial'[718] meeting of

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[713] *Ibid*.

[714] *Ibid* (Amery's emphasis).

[715] *Ibid*.

[716] FS Crafford *Jan Smuts: A biography* (1946) 157 - 158.

[717] P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 152. Egerton elaborates: 'In the Foreign Office, Headlam-Morley noted skepticism on Smuts's plan, and Crowe minuted that the scheme was "crude" and bristled with difficulties. Crowe and Tyrrell believed Smuts's proposal dangerously overelaborated the whole league idea. Cecil agreed but considered Smuts's plan useful as propaganda.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 434 n 54.

[718] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 41.

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the Imperial War Cabinet on Christmas Eve of 1918 to debate the league question, *A practical suggestion* provided the 'principal basis of discussion.'[719]

There was 'immediate opposition' from 'powerful figures' in the Cabinet,[720] as 'Smuts' plan took internationalism further than any of them wanted to go.'[721] The Dominium Prime Ministers and many of the British statesmen 'instinctively rejected anything that seemed to suggest the creation of a super-state.'[722]

The crux of the debate was whether a league of nations should possess independent executive authority in such vital arenas as 'armament policy, colonial administration, and, most important, collective resistance to aggression.'[723]

Conservatives, such as Andre Bonar Law, Chancellor of the Exchequer, Lord Curzon, Neville Chamberlain, and Secretary of State for Foreign Affairs, Lord Balfour, together with realists such as the Minister of Munitions, Winston Churchill, and the truculent Australian Prime Minister, William Morris Hughes, were vehemently opposed to the idea of collective

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[719] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 434. Egerton also repeats elsewhere that the discussion at the meeting of the Imperial War Cabinet on 24 December 1918 centred around *A practical suggestion*. *Ibid* 435.

[720] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 41. As Mazower puts it: 'On the British side, it remained a hard sell.' M Mazower *Governing the world: The history of an idea* (2012) 134. In *No enchanted palace*, Mazower recounts Smuts' uphill task in promoting his idea of a league of nations, driven by the United Kingdom and the United States, among British politicians who were traditionally cautious about making permanent international peacetime commitments. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 39 - 42.

[721] *Ibid* 41. '[E]ven Lord Robert Cecil, the cabinet's other ardent internationalist, had not been thinking at this stage about anything so far removed from what emerged after 1815 . . .' *Ibid*.

[722] P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 153; M Mazower *Governing the world: The history of an idea* (2012) 134;

[723] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435. Yearwood characterises the debate in the Imperial War Cabinet on Christmas Eve thus: 'Debate in the I.W.C. centered not on sanctions or the guarantee of peace, but rather on those points where Smuts, reflecting the new thinking, went beyond Phillimore. Disarmament and the powers of the League council were particularly controversial.' P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 152.

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security.[724] As Egerton explains: 'This powerful and preponderant group had no desire to see traditional Imperial strategies abandoned and the security of the Empire entrusted to a new and totally untried system.'[725]

Chamberlain did not believe that the Americans 'would put their forces at the disposal of an International Council.'[726] 'This was more than the British War Cabinet could do within the British Empire,' he argued.[727] The War Cabinet, could not, for example, 'order out the forces of Canada and Australia,' without the consent of these respective governments.[728]

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[724] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435; P Yearwood "'On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 152; M Mazower *Governing the world: The history of an idea* (2012) 134; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 41. As Mazower succinctly remarks: 'They feared that British troops would find themselves putting out fires all over the world, and questioned whether the League's military arrangements would add anything to Britain's defenses.' M Mazower *Governing the world: The history of an idea* (2012) 134. There were also those members of the Imperial War Cabinet who supported the principle of collective security. As Egerton observes: 'While no one wished to see the creation of a super-state, there were those like Cecil and Barnes who believed in the collective idea and were willing to countenance automatic economic and military sanctions against aggressors, as proposed in the Phillimore Report and incorporated into the memorandums by Smuts, Cecil, and the Foreign Office.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435. It should be noted that, although Cecil was not strictly speaking a member of government at the time of the 24 December meeting, he was brought back specifically to deal with the league question. P Yearwood "'On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 152. It was Cecil who presented Smuts' proposals to the Imperial War Cabinet, as Smuts was absent through illness. *Ibid*.

[725] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435. Imperialists, such as Amery, dismissed Smuts' proposals for a league of nations as 'moonshine.' Amery as quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 460. Sir Henry Wilson, Chief of Imperial General Staff, thought the league 'futile nonsense,' and Lord Milner referred to it as 'flapdoodle.' H Wilson and Milner as quoted in A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 51.

[726] Imperial War Cabinet 46 (24 December 1918) Cab 23/42, as quoted in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435. Chamberlain questioned the desirability of the official British position going further than what Lord Cecil proposed until they know how far the American government would go. Imperial War Cabinet 46 (24 December 1918) Cab 23/42, as cited in P Yearwood "'On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 152.

[727] *Ibid*.

[728] *Ibid*.

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Therefore, Smuts' scheme 'demanded more that we could effect even in our own dominions,' Chamberlain exclaimed.[729]

Hughes rejected Smuts' scheme as 'incompatible with national sovereignty.'[730] Balfour exhorted his colleagues to guard against allowing the league any jurisdiction over the internal affairs of any state, 'otherwise it would be impossible to foresee where the responsibilities of the League of Nations would end.'[731] To Churchill, a league of nations clearly could 'be no substitute for national defenses.'[732]

Notwithstanding the opposition within the Imperial War Cabinet against endowing the league with far-reaching authority, almost all those around the table recognised that a new post-war international organisation was an inescapable reality.[733] That much was clear from the popularity that the league idea enjoyed in British public opinion, and the stance of Wilson on this issue.[734]

Lloyd George, nicknamed the 'Welsh Wizard,' characteristically wanted 'both sides of the argument at once.'[735] He agreed with Cecil about the robust support for the league idea in British public opinion, and the necessity of disarmament, without which the league

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[729] *Ibid*. See also GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435. Cecil rushed to Smuts' defence (the latter was absent through illness): '[I]f any State broke the agreement to submit to a moratorium, all the other Leagued Nations would automatically be at war with it. This would be a condition of the Peace Treaty. general Smuts did not really go further than himself or the Phillimore Committee, and did not propose that the League should determine the military contribution of each country.' As quoted in P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 152.

[730] Imperial War Cabinet 46 24 December 1918 Cab 23/42 as cited in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435.

[731] *Ibid*.

[732] *Ibid* 435, 436.

[733] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 436; M Mazower *Governing the world: The history of an idea* (2012) 134. 'But whether the proposed League should be permanent or merely a new version of the old Concert, what the balance of power within it should be between small and large powers, how much executive authority it should possess, and how far it should be committed to defense of the postwar territorial settlement were all as yet undetermined.' *Ibid*.

[734] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 435, 436.

[735] M Mazower *Governing the world: The history of an idea* (2012) 134.

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would be looked upon as a 'sham.'[736] However, he also evidently renounced the idea of a league with independent executive power, and favoured a model where authority vested in national governments.[737]

Egerton explains the prime minister's seemingly incongruous position as follows:[738]

> It would seem that Lloyd George had entered the cabinet debate fully conscious of public support for the league project, hopeful that it could bring about disarmament, and personally impressed by Smuts's memorandum which he lauded as 'one of the ablest State papers he has read.' It is unlikely, however, that the prime minister had studied deeply the implications of Smuts's proposal or that he held any fixed personal views on the league question other than a generally favorable disposition. The criticisms advanced against Smuts's scheme were enough to convince him that it would be a mistake to attempt too much at the beginning.

Thus, although Lloyd George publicly supported Smuts, it was clear that there was apathetic support within the Imperial War Cabinet for any league model that went much beyond a permanent conference system.[739] It certainly appeared at the conclusion of the debate on 24 December that the conception of the league 'preached by [the conservative group] had triumphed.'[740]

Such was the policy-making background and the circumspect thrust of the instructions that the Imperial War Cabinet issued to Cecil and Smuts, as they prepared to

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[736] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 436; M Mazower *Governing the world: The history of an idea* (2012) 134; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 42.

[737] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 436; M Mazower *Governing the world: The history of an idea* (2012) 134 - 135. Lloyd George believed that the Imperial War Cabinet and the Versailles Council provided 'admirable precedents' for the framework of the league: '[O]n the basis of the Imperial War Cabinet and the Supreme War Council you would get a body whose authority rested with the Governments.' Lloyd George as quoted in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 436.

[738] *Ibid*.

[739] M Mazower *Governing the world: The history of an idea* (2012) 135; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 42. Mazower characterises the model of a league acceptable to the Imperial War Cabinet as 'a kind of improved version of 1815.' M Mazower *Governing the world: The history of an idea* (2012) 135.

[740] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 436.

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depart for Paris to represent the British government on the league question.[741] However, as Mazower notes:[742]

> They had failed to get their way in cabinet. But it turned out not to matter, for Smuts had won over someone far more influential - President Woodrow Wilson.

[741] *Ibid* 437; M Mazower *Governing the world: The history of an idea* (2012) 135; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 42.

[742] *Ibid*.

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3.3 Influence on Wilson

In January of 1918, the eyes of the world was fixed on President Woodrow Wilson.[743] On 8 January he articulated the principal war aims of the United States in his famous Fourteen

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[743] Of Wilson stature as a statesman at this time, Millin writes: 'It would be an understatement to say that in January, 1918, Woodrow Wilson was the most important man in the world. All the world looked to him. Even his enemies looked to him.' SG Millin *General Smuts volume 2* (1936) 148. Crafford likewise comments: 'When on Flanders' fields and elsewhere the tumult of battle had been silenced, the piteous cries could be heard of millions of starving men, women, and children, turning their faces to the west, too Woodrow Wilson and to America, where lay their salvation. The President's power in Europe and America and his prestige throughout the world were tremendous when he embarked for Europe . . . He had become the Prophet of a new age, the Saviour of a stricken world.' FS Crafford *Jan Smuts: A biography* (1946) 163. Elsewhere Crafford writes of Wilson's 'virtual deification prior to his landing in Europe.' *Ibid* 164. Harold Nicolson, a member of the British delegation at Paris, explains Wilson's appeal as follows: 'Here was a man who represented the greatest physical force which had ever existed and who had pledged himself openly to the most ambitious moral theory which any statesman had ever pronounced. It was not that the ideas of Woodrow Wilson were so apocalyptic: it was that for the first time in history you had a man who possessed, not the desire merely, not the power alone, but the unquestioned opportunity to enforce these ideas upon the whole world. We should have been insensitive indeed had we not been inspired by the magnitude of such an occasion.' H Nicolson *Peacemaking 1919: Being reminiscences of the Paris peace conference* (1933) 191 - 192. Crafford, quoting John Maynard Keynes, likewise writes: 'Wilson was armed with all the power in the world to carry his project into effect. According to Keynes, the American forces had reached the zenith of their power, while Europe "was at the mercy of the United States whom she already owed more than she could pay," and on whom she was utterly dependent for her very existence since bankruptcy and starvation were staring her in the face. "Never had a philosopher held such weapons wherewith to bind the princes of this world."' FS Crafford *Jan Smuts: A biography* (1946) 163. 'In an age before public broadcasting, air travel or television,' comments Sharp, 'Wilson was an unknown quantity, a larger-than-life figure, undiminished by overexposure.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 23. For a few weeks, before the onset of the 'confusions, quarrels, and disappointments' of the Paris conference, Wilson did indeed 'stand upon an unprecedented pinnacle of splendour.' FP Walters *A history of the League of Nations volume 1* (1952) 26. When Wilson traveled to Europe in December 1918, it was the first time that an incumbent United States president had visited Europe. M Mazower *Governing the world: The history of an idea* (2012) 155; M MacMillan *Paris 1919: Six months that changed the world* (2001) 3. There were those who argued that Wilson should maintain an 'Olympian aloofness in Washington,' lest he lose his great moral authority by descending into the hurly-burly of negotiations at the conference. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 23; M MacMillan *Paris 1919: Six months that changed the world* (2001) 3. Crafford comments: 'Familiarity has ever bred contempt. Had he remained in the United States, he could, like the sibylline oracle, have voided the touch which contaminates, and have given voice, across the waters as if to the sentiments of a nation; he could have remained the spirit incarnate of idealistic America, bringing balm to the wounds of a diseased and decadent Europe.' FS Crafford *Jan Smuts: A biography* (1946) 164. However, Wilson was firmly resolved, 'partly driven by intellectual curiosity and partly by a sense of moral responsibility,' to go to Paris. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 23. Wilson was persuaded that, at this moment in history, he was expressing the will of the American people ('It is now my duty to play my full part in making good what [American servicemen] gave their life's blood to obtain,' Wilson stated to Congress shortly before his departure for Europe) and indeed that he represented, more completely than their own governments, the deepest aspirations of the nations of Europe. FP Walters *A history of the League of Nations volume 1* (1952) 26; M MacMillan *Paris 1919: Six months that changed the world* (2001) 3. A British diplomat was contemptuous: Wilson, he said, was drawn to Paris 'as a debutante is entranced by the prospect of her first ball.' Quoted in *Ibid*.

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Points address to Congress.[744] The fourteenth point - 'placed in that position in order to give it special emphasis'[745] - was worded thus:[746]

> A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.[747]

As Margaret MacMillan eloquently expresses:[748]

> [I]t is easy to forget how important his principles were . . . and how many people, and not just in the United States, wanted to believe in his great dream of a better world. They had, after all, a terrible reference point in the ruin left by the Great War. Wilson kept alive the hope that human society, despite the evidence, was getting better, that nations would one day live in harmony . . . Across

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[744] FP Walters *A history of the League of Nations volume 1* (1952) 20. Three days earlier, on 5 January, Lloyd George had articulated British war aims in his Caxton Hall speech to the Trades Union Congress. 'Like Wilson, [Lloyd George] stressed the fact that "the days of the Treaty of Vienna are long past" and insisted that settling territorial issues alone was not enough.' M Mazower *Governing the world: The history of an idea* (2012) 127. The British Prime Minister called for a great attempt 'to establish by some international organization an alternative to war as a means of settling international debates.' Lloyd George as quoted in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 427. According to Hancock, the prime minister's speech was 'based in large measure upon the draft which [Smuts] had provided.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 471. Hancock continues: 'It was couched in the language of moral and political principle . . . the speech anticipated in its essential particulars (except for "the freedom of the seas") the fourteen points enunciated by President Wilson a few days later.' *Ibid*. Commenting on the two speeches, Sharp states: 'There were indeed striking similarities in tone and content but it was Wilson and not Lloyd George who seemed to articulate the growing need for aims and objectives of a sufficiently high moral standing to justify the suffering and sacrifices of the past three and a half years of war.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 13.

[745] FP Walters *A history of the League of Nations volume 1* (1952) 20.

[746] As cited in *Ibid*. See also M Mazower *Governing the world: The history of an idea* (2012) 273; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 43; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 30; C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 70; S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 818. Wilson subsequently elaborated upon his Fourteen Points in three significant speeches he delivered on 11 February (the 'Four Principles'), 4 July (the 'Four Ends'), and 27 September 1918 (the 'Five Particulars'). A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 13 - 14; SG Millin *General Smuts volume 2* (1936) 149. For a brief, but useful, summary of Wilson's Principles, Ends, and Particulars, see A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 94.

[747] FP Walters argues that the first four points were also 'intimately concerned with plans for the League.' FP Walters *A history of the League of Nations volume 1* (1952) 20. These points called for open diplomacy, freedom of the seas (except insofar as this principle might be curtailed by league action), removal of trade barriers, and reduction of armaments. FP Walters *A history of the League of Nations volume 1* (1952) 20. 'In launching his peace initiative President Wilson called for the establishment after the war of a "league of nations to insure peace and justice."' P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 131.

[748] M MacMillan *Paris 1919: Six months that changed the world* (2001) 14 - 15. In the context of a derisive remark Lloyd George had made about President Wilson: '[Wilson] came to the Peace Conference, said Lloyd George, like a missionary to rescue the heathen Europeans, with his "little sermonettes" full of rather obvious remarks.' *Ibid.*

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> Europe there were squares, streets, railway stations and parks bearing Wilson's name. Wall posters cried: 'We want a Wilson peace.' In Italy, soldiers knelt in front of his picture, in France, the left-wing paper *L'Humanité*, brought out a special issue in which the leading lights of the French left vied with each other to praise Wilson's name. The leaders of the Arab revolt in the desert, Polish nationalists in Warsaw, rebels in the Greek islands, students in Peking . . . all took the Fourteen Points as their inspiration.[749]

Wilson's message inspired intellectual *élites* and vast crowds alike, as evidenced by the 'rapturous reception' accorded him upon his arrival in France in December of 1918.[750] The

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[749] FP Walters likewise emphasises the 'important effects' the Fourteen Points had on public opinion among belligerents and neutrals alike. FP Walters *A history of the League of Nations volume 1* (1952) 21. Crafford asserts that Wilson's Fourteen Points 'had come like a gospel of peace, a doctrine of salvation to a sorely afflicted and disintegrating Europe, utterly helpless and stricken with palsy.' FS Crafford *Jan Smuts: A biography* (1946) 163. Wilson was not a man to appeal personally to a crowd, but his reception in Great Britain, France, and Italy on the eve of the Peace Conference 'was one of enthusiasm such as no British, French, or Italian leader could have counted on. Had he visited Vienna or Berlin, the scenes would have been the same.' FP Walters *A history of the League of Nations volume 1* (1952) 21. MacMillan furnishes a vivid account of Wilson's arrival in France: 'The *George Washington* reached the French port of Brest on December 13, 1918. The war had been over for just a month. While the president stood on the bridge, his ship steamed slowly in through a great avenue of battleships from the British, French, and American navies . . . [T]he streets were lined with laurel wreaths and flags. On the walls, posters paid tribute to Wilson, those from right-wingers for saving them from Germany and those from the left for the new world he promised. Huge numbers of people, many resplendent in their traditional Breton costumes, covered every inch of pavement, every roof, every tree. Even the lampposts were taken. The air filled with . . . repeated shouts of "Vive l'Amérique! Vive Wilson!" The French foreign minister, Stéphen Pinchon, welcomed him, saying, "We are so thankful that you have come over to give us the right kind of peace" . . . Wilson's reception in Paris was an even greater triumph, with even greater crowds: "the most remarkable demonstration," said an American who lived in Paris, "of enthusiasm and affection on the part of Parisians that I have ever heard of, let alone seen." His train pulled into the Luxembourg station, which had been festooned with buntings and flags and filled with great masses of flowers. Clemenceau, the French prime minister, was there with his government and . . . the president, Raymond Poincaré. As guns boomed across Paris to announce Wilson's arrival, the crowds started to press against the soldiers who lined the route. The president and his wife drove in an open carriage through the Place de la Concorde and on up the Champs-Elysées to their residence, to the sound of wild cheers.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 15 - 16. Of Wilson's reception in Europe generally, Mazower writes: 'To the two million Parisians who turned out to watch his arrival at the end of 1918 he was "the God of Peace;" in Milan, "the savior of Humanity" and "the Moses from across the Atlantic."' M Mazower *Governing the world: The history of an idea* (2012) 118. See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 23; FP Walters *A history of the League of Nations volume 1* (1952) 26.

[750] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 14. Wilson's message inspired, not just the liberals and pacifists, but also Europe's political and diplomatic *élites*. MacMillan recounts how Sir Maurice Hankey, the powerful Secretary of the War Cabinet, and then Secretary of the Peace Conference itself, carried a copy of the Fourteen Points in the box he kept for essential reference material. They were, Hankey said, the 'moral background.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 15.

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Entente Powers subsequently adopted, with limited reservations,[751] the Fourteen Points as the general Allied war aims; and Germany and Austria-Hungary explicitly invoked them as the basis upon which they sued for peace.[752]

It can therefore be argued that the Fourteen Points occupies an exalted place in the history of war and peace, and, more specifically, the League of Nations.[753] The 'vague hope of a better, fairer world to come,' which Smuts movingly wrote about in *A practical suggestion*,[754] 'crystalized henceforth round the words "League of Nations," and round the person of Woodrow Wilson, as the chief protagonist of the League.'[755] George Egerton writes:[756]

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[751] Great Britain insisted on a formal reservation in the pre-armistice agreement against Wilson's principle of 'freedom of the seas.' The world's naval hegemon was not prepared to relinquish the power of naval blockade to destroy an enemy's trade. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 15; 16. A second reservation concerned 'restoration' or, as it came to be called, 'reparation.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 506. MacMillan points out that the 'Europeans . . . had never been prepared to accept the Fourteen Points without modification.' In addition to the British reservation to the 'freedom of the seas' principle, France sought to ensure that it received just compensation for the mammoth damage done by the German invasion and subsequent withdrawal. M MacMillan *Paris 1919: Six months that changed the world* (2001) 19. Sharp mentions that the British also hoped to establish that the 'free, open-minded and absolutely impartial adjustment of colonial claims' under Wilson's fifth point was limited to enemy colonies. They were also 'anxious to see demands for reparations and the trial of war criminals included in any settlement.' In addition to reparations, France 'wanted much more specific guarantees of security than the Wilsonian league.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 15.

[752] FP Walters *A history of the League of Nations volume 1* (1952) 21; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 12. 'Victors and vanquished alike accepted Wilson's Fourteen Points as the basis of the future peace.' FP Walters *A history of the League of Nations volume 1* (1952) 21. Walters argues that all the belligerents, in acknowledging Wilson's Fourteen Points, 'took the definite engagement to establish a League of Nations.' *Ibid*.

[753] *Ibid*.

[754] JC Smuts *The League of Nations: A practical suggestion* (1918) 13.

[755] FP Walters *A history of the League of Nations volume 1* (1952) 21. When Wilson addressed the League to Enforce Peace in Washington, DC on 27 May 1916, he became the first world statesman to give the idea of a league official sanction. FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 27. After his re-election in November of 1916, 'his position as President of the United States, combined with his own powerful personality, made him appear as the head of a movement not only in America but in the whole civilized world.' FP Walters *A history of the League of Nations volume 1* (1952) 18.

[756] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 423. President Wilson was the 'inspiration' behind and the 'progenitor' of the League, its 'most effective champion.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 44; 64.

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> [I]t was President Wilson, more than anyone else, who succeeded in elevating the league idea to the front-rank position in the Allied War aims declarations and the liberal ideological counter-thrust of the 'new diplomacy.'[757]

Wilson's role in founding the League was 'absolutely critical.'[758] Of the part played by Wilson, Smuts said:[759]

> Only Wilson could have put through the League and did. He was the one statesman with the power and the vision. The other statesmen weren't concerned about the League except as an instrument for their own ends - that is to say their country's ends. Wilson put the League above this greedy squabbling.

It is no exaggeration to state that, without the support of the person who wielded the vast power of the United States, the League would have, in all probability, remained an idealistic concept devoid of any practical reality – a mere blueprint.[760]

The reason is that Lloyd George and Clemenceau did not view the League in the same light as Wilson.[761] The League of Nations was 'at the heart' of Wilson's vision.[762] For Wilson, as for Smuts, the League of Nations was the 'real business of this Conference.'[763]

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[757] Likewise, Sharp maintains that: 'Wilson had captured the imagination of liberals throughout the warring nations and had achieved a moral domination of the Allied powers which was backed by American economic strength and growing military and naval might.' *Ibid* 13.

[758] M Mazower *Governing the world: The history of an idea* (2012) 118; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 63 - 64.

[759] SG Millin *General Smuts volume 2* (1936) 173.

[760] M Mazower *Governing the world: The history of an idea* (2012) 118; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 63. Anticipating the vital role of the United States at the negotiating table in Paris, Lloyd George stated: 'The President's presence at the peace conference is necessary for the proper organization of the world which must follow peace . . . If he sits in the conference . . . he will exert the greatest influence that any man has ever exerted in expressing the moral value of free government.' Lloyd George as quoted in *Ibid* 11.

[761] Even before Wilson left for Europe, he made his insistence clear that, not only should the league be a constituent part of the peace settlements, but also that the task of creating the league should have priority over all other business at the conference. He did this, at least in part, because 'he suspected that none of the European powers cared much about starting the League, so that it could only be brought into existence by a strong American presence.' FP Walters *A history of the League of Nations volume 1* (1952) 31.

[762] M MacMillan *Paris 1919: Six months that changed the world* (2001) 13.

[763] Smuts to A Clark 21 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 51; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 58. 'In Paris, Wilson insisted on chairing the League commission, because for him the League of Nations was the centerpiece of the peace settlements.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 85.

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As set forth above, but for President Wilson's enthusiastic approbation of the league idea, the Imperial War Cabinet would likely not have supported its own internationalists, to wit Smuts and Cecil.[764] The league cause never 'caught [Lloyd George's] imagination' as it did President Wilson's.[765] Lloyd George paid lip service to the idea, but seemingly only because the British public clamoured for a league,[766] and because President Wilson's total commitment to the league could prove useful as a 'bargaining tactic to realise British objectives in other, more critical, spheres.'[767]

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[764] M Mazower *Governing the world: The history of an idea* (2012) 118; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 118.

[765] M MacMillan *Paris 1919: Six months that changed the world* (2001) 86. As is the case with much surrounding Lloyd George, there is uncertainty about the Prime Minister's true attitude and commitment towards the League. In his memoirs, Lloyd George 'quite naturally portrays himself and his government as consistent in their devotion to the league cause, and he forcefully rejects the notion that the major credit for the creation of the League of Nations should go to Wilson.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 437. However, Ray Stannard Baker views Lloyd George and Clemenceau to be part of the conspiracy of the old order against Wilson's 'new diplomacy' and the League. RS Baker *Woodrow Wilson and world settlement volume 1* (1923) 240. FP Walters, a participant in the Peace Conference, writes in his standard history of the League: 'Lloyd George as Prime Minister cared nothing about the ideal of a League.' FP Walters *A history of the League of Nations volume 1* (1952) 19. Lord Robert Cecil, who, together with Smuts, represented Great Britain on the League of Nations Commission, argued that, although the Prime Minister supported the League officially, his approval was always 'chilly,' and he regarded it as 'of secondary importance.' Cecil as quoted in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 420. Yearwood observes that Lloyd George had made clear to Maurice Hankey that he (Lloyd George) did not intend to turn the League into a 'factor of great importance in future world politics.' P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 154. Yearwood continues: 'Lloyd George largely ignored the formal organization established by the peace treaties in favour of an *ad hoc* system of great power conferences. He never went to Geneva. Not until 1922, when all other alternatives had failed, did the prime minister begin again to display and interest in the league of nations. In its formative years the new body was weakened by the indifference of the British government . . .' *Ibid*.

[766] McMillan astutely observes that as a consummate politician, Lloyd George knew the British public. He stated to his colleagues in the Imperial War Cabinet on 24 December 1918: 'They [the British public] regard with absolute horror the continuance of a state of affairs which might again degenerate into such a tragedy.' Lloyd George as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 86. Lloyd George fully realised that it would have been political suicide to return from the peace conference without a league of nations. *Ibid*.

[767] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 437. At a meeting of the Imperial War Cabinet on 30 December 1918, after Lloyd-George had discussed the League with Wilson, the Prime Minister expressed confidence that British interests could be served through cooperation with the United States: '[I] am not pessimistic about inducing President Wilson to agree ultimately, though possibly under protest, to the things to which we attach importance, providing he could secure his League of Nations, which, politically, was a matter of life or death to him.' Lloyd George as quoted in *Ibid*. The League was 'the only thing he [Wilson] really cared much about' and British cooperation in this regard 'would ease other matters such as the question of the "Freedom of the Seas," the disposal of the German colonies, economic issues, etc.' Lloyd George as quoted in A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 49.

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Clemenceau was convinced that security against future German aggression would be France's greatest post-war need[768] - a need that could *only* be met by 'keeping the wartime alliance alive.'[769] Recent history had illustrated all too clearly to him the importance of 'keeping the powder dry and guns primed.'[770] Thus, although not openly hostile to the idea of a league of nations, Clemenceau was doubtful of its efficacy.[771] He famously remarked: 'I like the League, but I do not believe in it.'[772]

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[768] 'France wanted revenge and compensation,' comments MacMillan, 'but above all it wanted security. No one was more aware of this than its prime minister.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 32. With regard to Clemenceau's priorities at the Peace Conference, Crafford states: 'From the outset, Clemenceau was determined to dictate a peace of his own making . . . Believing implicitly that wars were inevitable in Europe, that the old order did not change, and that a magnanimous peace would be extreme folly, he was determined to break Germany.' FS Crafford *Jan Smuts: A biography* (1946) 162 - 163.

[769] M MacMillan *Paris 1919: Six months that changed the world* (2001) 32. Clemenceau declared to the Chamber of Deputies in December 1918: 'To preserve the entente, I will make any sacrifice.' *Ibid*.

[770] *Ibid* 24. Crafford describes the attitude with which Clemencau approached the Peace Conference thus: 'He hated Germany, the traditional enemy of France, with a relentless and implacable fury. To him, France was the universe.' FS Crafford *Jan Smuts: A biography* (1946) 162. 'It may only be legend that Clemenceau asked to be buried upright, facing Germany. It was certainly true that he had been on guard against France's great neighbor for most of his life. He was only twenty-eight when the Franco-Prussian War started, and he was part of the group of left-wing republicans who fought on in Paris after the French armies were defeated. He saw the city starve, the French government capitulate and the new German empire proclaimed in the Hall of Mirrors at Versailles . . . As a journalist, writer, politician and finally prime minister, he sounded the same warning: Germany was a menace to France. "My life's hatred," he told an American journalist shortly before he died, "has been for Germany because of what she has done to France" . . . During the Peace Conference, France's allies became exasperated with what they saw as French intransigence, French greed and French vindictiveness. They had not suffered what France had suffered . . . France not only had suffered the most; it also had the most to fear. Whatever happened, Germany would still lie along its eastern border. There would still be more Germans than French in the world. It was an ominous sign that even the souvenir penknives engraved with "Foch" and "La Victoire" being sold in France in 1919 had been made in Germany.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 27, 28, 31 - 32. In comparing Wilson and Clemenceau, MacMillan observes: 'Both were liberals with a conservative skepticism of rapid change. What divided them was temperament and their own experience . . . Wilson believed that human nature was fundamentally good. Clemenceau . . . and Europe, had been through too much. "Please do not misunderstand me," he [Clemenceau] once said to Wilson, "we too came into the world with the noble instincts and the lofty aspirations which you express so often and so eloquently. We have become what we are because we have been shaped by the rough hand of the world in which we have to live and we have survived only because we are a rough bunch."' *Ibid* 23. To the pleas from Wilson and Lloyd George for a spirit of reconciliation towards Germany, Clemenceau had a ready response: 'America is far away, protected by the ocean. Not even Napoleon himself could touch England. You are both sheltered; we are not.' Clemenceau as quoted in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 9.

[771] M MacMillan *Paris 1919: Six months that changed the world* (2001) 86.

[772] Clemenceau as quoted in *Ibid*. Clemenceau scoffed at President Wilson's Fourteen Points: 'What ignorance of Europe and how difficult all understandings were with him! He believed you could do everything by formulas and his fourteen points. God himself was content with ten commandments. Wilson modestly inflicted fourteen points on us . . . the fourteen commandments of the most empty theory.' Clemenceau as quoted in *Ibid* 33. See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 14. Crafford quotes Clemenceau as saying: 'President Wilson with his Fourteen Points is worse than God Almighty. Le Bon Dieu only had ten . . .' FS Crafford *Jan Smuts: A biography* (1946) 162.

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It appears curious, at first glance, that President Wilson - so intensely devoted to the league idea, and so adamant that it should constitute an integral part of the peace settlement - did not take the lead in drafting detailed proposals for the constitution and functioning of the proposed international organisation.[773] 'Wilson spoke only in generalities, albeit inspiring ones.'[774]

The American President resisted all efforts to establish either an American committee, similar to those in Paris and London, for preparing a United States proposal,[775] or an Anglo-American committee to examine the question.[776] Indeed, before arriving in Europe at the end of 1918, 'the man who had put the League at the heart of the Allied peace program,' had kept an enigmatic silence on any specific American designs for the league.[777] He evidently feared public controversy[778] and entanglement with the British,[779]

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[773] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 27.

[774] M MacMillan *Paris 1919: Six months that changed the world* (2001) 87.

[775] FP Walters *A history of the League of Nations volume 1* (1952) 23.

[776] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972. Curry reveals that when Colonel Edward House, the president's agent in the matter, received a copy of Lord Cecil's 'pioneer draft' of a league scheme in September 1917 with the suggestion that an Anglo-American committee be formed, Wilson preferred to leave the initiative with his 'secret team of experts,' the so-called 'Inquiry.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972; M Mazower *Governing the world: The history of an idea* (2012) 127. The Inquiry did detailed and abundant work on specific European countries and nationalities for purposes of the territorial settlement in Europe, 'but thinking about the precise shape of the new peacetime international organization was much less advanced.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 44; M Mazower *Governing the world: The history of an idea* (2012) 127.

[777] M MacMillan *Paris 1919: Six months that changed the world* (2001) 87. Wilson persuaded the British government not to publish the Phillimore Report after it was completed in March of 1918. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972; RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151.

[778] Each of the reports of the Phillimore and Bourgeois Committees had been communicated to Washington, not for purposes of setting forth the formal policy of either government, but to spur the American president and his advisors into formulating their own proposal. 'This Wilson had, of deliberate purpose, refrained from doing,' notes Walters. FP Walters *A history of the League of Nations volume 1* (1952) 22 - 23. Walters continues: 'He [Wilson] believed that if detailed proposals were put forward officially before the end of the war, they would lead to keen debate on particular points, and that the effect would be to weaken the united support which the [American] nation was ready to give to the main principles of the League.' *Ibid* 23.

[779] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972.

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and he wished to avoid alienating Germany by creating what might appear to be an anti-German Holy Alliance.[780]

However, given Wilson's passionate commitment to the league idea, it is more likely that his silence[781] was the result of a profound ambivalence about the exact form that the

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[780] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 43. 'Wilson thought it was a mistake to get down to specifics while the war was still on. That would only cause dissension among the Allies and it might give the enemy countries the impression that the League was somehow directed against them.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 87. Mazower suggests that Lloyd George's Caxton Hall speech (which, according to Keith Hancock, Smuts had a major hand in drafting), delivered three days prior to Wilson's Fourteen Points speech, was a 'lot clearer' and that 'the clarity was not accidental': 'Lloyd George's speech was in part an effort to flush Wilson out on the matter (hence Wilson's reference, not altogether positive, in *his* speech, to the "admirable candor" of the British premier's words.) For unlike Americans, whom Wilson had steered away from the subject, the British and their imperial cousins had been thinking seriously about the contours of this new international organization for nearly three years and they now wanted to know whether there was any support for their views in Washington.' M Mazower *Governing the world: The history of an idea* (2012) 128. Stromberg posits that Wilson's refusal to commit himself was in part deliberate, based on his 'considered rejection of a premature league and his considerable suspicions of the Allied leaders and indeed of almost everybody on this subject.' RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151.

[781] It would be an exaggeration to state, as Stromberg does, that '[t]here was no American plan on the eve of the Peace Conference.' RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151. John Maynard Keynes, one of Wilson's harshest critics, likewise overreaches when he suggests that one would have thought that Wilson, prior to leaving America's shores, would have evolved, with the aid of a multiplicity of advisors, an extensive scheme for a league of nations and for the requisite embodiment of his Fourteen Points in the Peace Treaty. 'But, he had no plan, no scheme, no constructive ideas whatever for clothing with the flesh of life the commandments which he had thundered from the White House.' Keynes as quoted in FS Crafford *Jan Smuts: A biography* (1946) 164. In June of 1918, Wilson, displeased with both the Phillimore and Bourgeois proposals, authorised Colonel House to start preparing the American version of a league plan. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 31. Wilson received House's proposals on 16 July 1918, and rewrote them into a proposal of his own some time before he visited House at Magnolia, Massachusetts, in mid August (the so-called 'Magnolia draft'). G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972 - 973. However, Wilson kept both these drafts strictly confidential, not even sharing them with his Secretary of State, Robert Lansing. FP Walters *A history of the League of Nations volume 1* (1952) 23. Hence Lansing's complaint on 16 November 1918 of the absence of any American draft. RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151. It is, however, a fact that American designs for a league were neither as detailed nor as advanced as those of the British. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 973. Stromberg is likely correct in stating that: 'Despite a good deal of anxiety about this procrastination, Wilson had put off the matter until the last possible moment.' RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151. On board the cruiser, *George Washington*, en route to Europe, 'to the consternation of [his] advisers,' Wilson confessed to having given little thought to the details of the League. *Ibid*. MacMillan confirms Stromberg's assessment: 'On board the *George Washington* . . . [t]he American experts worked away on their maps and their papers, asking each other, with some disquiet, what their country's policies were to be. Wilson had said much about general principles but had mentioned few specifics. A young man called William Bullitt boldly went up to the president and told him that they were all confused by his silence. Wilson was surprised but agreed . . . to meet with a dozen of the leading experts. "It is absolutely the first time," said one afterward, "the president has let anyone know what his ideas are and what his policy is." [Wilson] spoke about the heavy task ahead and how he was going to rely on them to provide him with the best information . . . He apologized for talking about his own ideas: "they weren't very good but he thought them better that anything else he had heard."' M MacMillan *Paris 1919: Six months that changed the world* (2001) 8 - 9. Sharp also notes that Wilson's 'precise plans remained obscure even to his companions on the voyage.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 23.

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league should take.[782] 'The real problem,' states Mazower bluntly, 'was that Wilson did not know exactly what he wanted. It was Smuts who helped him to find out.'[783]

Wilson almost certainly first received a copy of Smuts' plan at Buckingham Palace during his visit to Britain prior to the Paris Peace Conference.[784] There seems to be near universal agreement among scholars that Smuts' *A practical suggestion* had a

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[782] RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151. To Wilson there did not seem to be a clear answer 'amid the welter of contradictory schemes, none of which was free from serious objection. Accused of ignoring his advisers, Wilson might have done so because he found they were of little help. House, Lansing, Bliss, The Inquiry, etc., every man seemed to have his own League, but how was one to choose between them?' *Ibid*.

[783] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 44. Sir William Wiseman, head of the British Intelligence Mission in the United States, wrote to his Government in August of 1918 that 'Wilson has not yet decided what is the best way to proceed with the idea of a League of Nations.' Quoted in RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 151. 'Thus, with skilled diplomacy, Wilson's unformed ideas could be molded to Britain's advantage.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 17.

[784] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 975. The person who likely gave Wilson a copy of Smuts' pamphlet was Gordon Auchincloss, the member of Wilson's entourage responsible for making advance arrangements for Wilson's ceremonial visit to Britain. *Ibid* 974. Mazower states: 'Reading his [Smuts'] work as he sailed on the *SS George Washington* to Paris, keeping most of his [Wilson's] own advisers at bay, he fell under its influence.' M Mazower *Governing the world: The history of an idea* (2012) 134. Although it has a certain romantic appeal, historically, Mazower's version is most likely not factually correct. It is more likely, as Curry suggests, that: 'It was while he was making his first guarded contacts with the European leaders that Wilson fell under the spell of Smuts's *Practical Suggestion* . . . Although Lloyd George's memoirs suggests that Smuts had journeyed to Paris to explain his ideas to the President in advance of the London visit, there is no record elsewhere of such a meeting.

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'profound'[785] influence on President Wilson, and that he was 'captivated'[786] by it, and completely 'fell under [it's] spell.'[787] Evidence of Wilson's admiration for Smuts' proposals is also to be found in Wilson's 'first Paris draft' of a league plan.[788] In several instances,

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[785] This is the assessment of David Hunter Miller, legal advisor to the American delegation at Paris, and the scholar most critical of Smuts' pamphlet. DH Miller *The drafting of the Covenant volume 1* (1928) 35. See also C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 82 (Wilson was 'greatly struck' by Smuts' pamphlet); R Kraus *Old master: The life of Jan Christian Smuts* (1944) 272 (Smuts' *A practical suggestion* impressed Wilson 'deeply'); J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 133 ('The most important statesman, President Wilson . . . was greatly impressed by Smuts' articulate, yet deeply moving memorandum.'); D Wilson *Smuts of South Africa* (1946) 85 - 86 ('President Woodrow Wilson of American was already an enthusiast for the League of Nations, and when he saw Smuts' plan he gladly adopted it. From that moment the two men worked together for what was, to each of them, the biggest cause of all - the cause of world peace and justice.'); FS Crafford *Jan Smuts: A biography* (1946) 160 ('"After Wilson had read Smuts's memorandum," said Lloyd George, "he swallowed it whole."')

[786] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 58. United States Secretary of State, Robert Lansing, wrote on 8 January 1919: 'The Smuts plan seemed to have captured the Pres't. I argued that the two plans [those of Smuts and Lord Robert Cecil] were the same. He disagreed. I feel that the principal covenant will be side-tracked unless the Pres't takes a stronger attitude. Smuts' plan is nothing more than a concert of Powers.' Lansing as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 978. See also IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97 - 98. General Tasker Bliss, American military representative on the Supreme War Council, and an American plenipotentiary at the Peace Conference, wrote confidentially from Paris to the Secretary of War, Newton D. Baker, in Washington, DC: 'He [the President] was very much impressed by a document which he described as thoroughly statesmanlike in character which has been prepared by General Smuts . . . He was struck by the extraordinary resemblance of General Smuts' views on such subjects as the League of Nations to the American views. In view of General Smuts' intimate relations with the British government and the fact that he had heard no criticism of this document, he hoped that these views might be more or less the governmental views.' Bliss as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 976.

[787] M Mazower *Governing the world: The history of an idea* (2012) 134; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 975.

[788] This was in fact a revision of Wilson's 'Magnolia draft,' after he had had the opportunity to study the Smuts proposals. It was dated 10 January 1919, a week before the peace conference opened in plenary session. It was completed after the president returned to Paris after his brief European tour, hence the reference to the 'first Paris draft.' Since it was the first of Wilson's proposals to be printed and circulated, it is sometimes erroneously described as Wilson's first draft. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 976; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 36; M MacMillan *Paris 1919: Six months that changed the world* (2001) 90; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97.

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Wilson 'borrowed directly from the Smuts pamphlet.'[789] As FS Northede explains: '[Wilson] was more skilled in reshaping other people's plans, couching them in felicitous language and throwing behind them his immense authority.'[790]

Wilson embraced Smuts' idea of an executive council of the Great Powers, fortified by representatives chosen, in rotation, from the intermediate powers, and then the lesser states, and a veto in the council by three or more nay votes.[791] Expounding upon the commonalities between Wilson's first Paris draft and Smuts' proposals, George Curry comments:[792]

> Indeed, Wilson's Article Two . . . leaned heavily on the Smuts plan both in context and language, as did his disarmament proposals. There was a specific reference, in Smuts' own terms, to the abolition of conscription and to the regulation by the league of the numbers in militia and volunteer armies. There was no longer any provision for compulsory arbitration, an omission from Magnolia[793] also attributable to the influence of Smuts and of the Phillimore Report. Many of Smuts's recommendations on the guarantees surrounding arbitration and the penalties facing covenant-breaking states were reproduced almost identically.

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[789] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 976. Other scholars likewise note the 'strong influence' of the Smuts pamphlet on Wilson's first Paris draft (A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50); Wilson 'completely revised his own draft of a League, leaning heavily on both the wording and content of Smuts's outline' (J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 133); Wilson 'based' his first Paris draft on Smuts' proposals (IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97); Wilson 'embodied' many of Smuts' ideas in his first Paris draft (R Kraus *Old master: The life of Jan Christian Smuts* (1944) 272); Wilson 'borrowed many of Smuts's ideas' (M MacMillan *Paris 1919: Six months that changed the world* (2001) 90); and '[i]ndeed, most of the ideas he introduced at Paris were based either on Smuts or on other British drafts' (M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 44). See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 36.

[790] *Ibid* 27.

[791] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 977; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 36; C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 82; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 98; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50.

[792] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 977. See also FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 36; C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 82 - 83; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 98; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50.

[793] As stated above, Wilson's first draft of a League plan, prepared before he departed the United States for Europe, was referred to as the so-called 'Magnolia draft.'

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Setting the stage for the future confrontation between Wilson and the Dominium representatives with regard to the mandates issue, Wilson followed, almost completely, Smuts' proposals for the league as the 'successor to the Empires,' but with a radical alteration. Instead of the mandates system being the solvent to the problems of Eastern Europe, as envisioned by Smuts, Wilson proposed that it be applicable to 'Austria-Hungary, and to Turkey,' and - significantly - '*in respect of the colonies formerly under the dominion of the German Empire.*'[794]

Addressing the Senate Committee on Foreign Relations at a White House Conference on 19 August 1919, President Wilson himself acknowledged the influence that Smuts had on his thoughts during those early days in Paris:[795]

> [B]etween that time [the writing of his first draft (the 'Magnolia draft')] and the formation of the commission on the league of nations, I had the advantage of seeing a paper done by General Smuts, of South Africa, who seemed to me to have done some very clear thinking, particularly with regard to what was to be done with the pieces of the dismembered empires. After I got to Paris, therefore, I re-wrote the document . . .

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[794] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 977 (Curry's emphasis); IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 98. See also FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 37; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50. In this regard, Wilson followed Lord Robert Cecil. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 50. Both Smuts and Wilson greatly stressed mandatory control being exercised, only with the consent of the populations concerned and by a state agreeable to them, and that the mandatory agency should 'in all cases be bound and required to maintain the policy of the open door, or equal opportunity for all the signatories of this covenant in respect of the use and development of the economic resources of such people or territory.' C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 82.

[795] Wilson quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 977. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 201; FS Crafford *Jan Smuts: A biography* (1946) 160.

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President Wilson conducted the foreign policy of the United States 'in the language of moral principle.'[796] Although Smuts' *A practical suggestion* 'had flashes of generous aspiration,' it was also couched in the language of *realpolitik*.[797] Wilson found therein, not simply an idealism that matched his own, but also a 'grasp of political realities that crystallized his thoughts on many points which up to that moment had been only vague ideas.'[798]

After arriving in Paris, Wilson generally kept the American plenipotentiaries and advisors ignorant of his plans and intentions, and they grumbled incessantly about his

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[796] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 499. 'Wilson is widely credited with injecting moral considerations into American foreign relations,' confirms Wertheim. S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 344. 'Even more important than the specific content of the [Fourteen] Points,' notes Sharp, 'was their high moral tone.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 15. And, despite critics, such as Lord Curzon, who deprecated the nebulous nature of Wilson's ideas, 'few doubted their high moral tone.' *Ibid* 23. Wilson strongly emphasised the principle of morality in his designs for the league. 'We are depending primarily and chiefly,' Wilson declared in his first draft of a covenant of the league (the 'Magnolia draft'), 'upon one great force, and this is the moral force of the public opinion of the world.' Wilson as quoted in S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801. In his famous defence of Article X of the Covenant of the League of Nations before the Senate Foreign Relations Committee in August 1919, Wilson explained the guarantee of political independence and territorial integrity as 'a moral, not a legal obligation,' 'binding in conscience only, not in law . . . Now a moral obligation is of course superior to a legal obligation, and, if I may say so, has a greater binding force.' Wilson as quoted in *Ibid* 830.

[797] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 499.

[798] JC Smuts *Jan Christian Smuts: A biography* (1952) 201. See also FS Crafford, citing a member of the British delegation who stated that Smuts' pamphlet 'crystalized for Wilson what in his own mind had been vague and formless. It cut to the very heart of things.' FS Crafford *Jan Smuts: A biography* (1946) 158. Mazower agrees that Smuts 'offered an appealing blend of morality and realpolitik . . . This combination of philosophical ideals and sound strategy struck a chord with President Wilson.' M Mazower *Governing the world: The history of an idea* (2012) 133. Millin explains Wilson's devotion to Smuts' proposals thus: 'Wilson was not a practical man. He had this vast structure of a plan which needed to be adapted to varying facts and circumstances and filled in with details, and as he got little help or understanding from his staff, he looked to others for these facts and details.' SG Millin *General Smuts volume 2* (1936) 173. Pomerance, in discussing the view of Wilson's critics of the President's lack of detail, states: 'He [Wilson] was comfortable only as long as he did not have to descend from the heights of moral platitudes to the world of complex reality.' M Pomerance 'The United States and self-determination: Perspectives on the Wilsonian conception' (1976) 70 *American Journal of International Law* 5. In the words of John Maynard Keynes: 'He had no plans . . . for clothing with the flesh of life the commandments which he had thundered from the White House. He could have preached a sermon on any of them or have addressed a stately prayer to the Almighty for their fulfilment; but he could not frame their concrete application to the actual state of Europe.' Keynes as quoted in *Ibid*. With regard to Wilson's lack of practicality, MacMillan conveys a remark that Clemenceau made to House, Wilson's closest advisor: 'I can get on with you. You are practical. I understand you, but talking to Wilson is something like talking to Jesus Christ!' Clemenceau as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 18.

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secrecy and self-importance.[799] Curry suggests that an important part of Wilson's insistence on keeping matters to himself was his 'partiality for Smuts's document,' which caused a 'minor storm among his American colleagues.'[800]

As set forth below, during the tumultuous months of the Paris Peace Conference, Smuts seemingly enjoyed the President's steadfast confidence as did no one in the American delegation (with the possible exception of Colonel House).[801] Indeed, theirs was a 'close collaboration.'[802]

4. Intellectual communion between Smuts and Wilson

The foregoing begs the question: Apart from Wilson's predisposition towards Smuts' 'appealing blend of morality and *realpolitik*,'[803] why would the convictions of the 'second representative of a small state in the far flung British Empire'[804] have such a pronounced

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[799] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 977 - 979. Curry describes the discontent among the American delegation well: '[T]he mood of Wilson's entourage soon changed to one akin to the dismal Paris weather which was overcast and squally. On Thursday, January 16, Lansing noted pessimistically: "No general plan of the Conferences has been mapped out, no committees on program or procedure. All is confusion & uncertainty. I do not seem able to arouse the Pres't to the situation." The Secretary of State was not, of course, in Wilson's full confidence, nor can he be cited as a wholly unprejudiced observer. It can be fairly assumed, however, that others in the delegation shared his misgivings.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 978 - 979. Harold Nicolson also refers to Lansing's condemnation of the President for his 'unbusinesslike methods, for his lack of program or co-ordination.' H Nicolson *Peacemaking 1919: Being reminiscences of the Paris peace conference* 197. Nicolson quotes Lansing as writing: 'From the first to the last, there was no team work, no common counsel, no concerted action.' Lansing as quoted in *Ibid*.

[800] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 978. Commenting on a meeting at which Wilson presented his first Paris draft to the American commissioners, Robert Lansing wrote in his diary of 10 January 1919: 'A very unsatisfactory session. Pres't apparently resents anybody offering suggestions or doing anything in the way of drafting a treaty for a League of Nations except himself . . . Pres't sent confidential print of so-called 'covenant' on League of Nations. Read it with discouragement. It is most inartistic and faulty. It will never go, never. It adopts Smuts' plan in part.' Lansing quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 978.

[801] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 99. According to Stromberg, it is well-known that Wilson 'brusquely dismissed advice at Paris from his commissioners and others.' RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 150. See also generally G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 968 - 986.

[802] JC Smuts *Jan Christian Smuts: A biography* (1952) 201.

[803] M Mazower *Governing the world: The history of an idea* (2012) 133.

[804] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 99.

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impact on 'the most important man in the world?'[805] Scholars attribute it to genuine mutual admiration,[806] basic ideological affinity,[807]

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[805] SG Millin *General Smuts volume 2* (1936) 148.

[806] Millin concedes that, before departing for Paris, Smuts saw Wilson only as a means to and end. Smuts 'saw then only the the League.' SG Millin *General Smuts volume 2* (1936) 170. However, Millin continues: '[W]hen Wilson came to Europe and he [Smuts] found things in Wilson that were in himself, and he saw how Wilson was prepared to yield anything - every selfish hope and his very life - for the League, then a feeling for Wilson came to him that grew still stronger as Wilson struggled and the League struggled and the world contemned both and Wilson died and the League seemed like to die too . . . When Smuts speaks to-day about great Americans he says that Alexander Hamilton was a greater man than Washington, and Wilson a greater man than Lincoln, and that American will yet acknowledge the greatness of Wilson - one day when they are greater themselves. Wilson was too big a figure, he says, for the Americans of his time: a world figure, not an American figure. "If I think," he [Smuts] says, "of American statesmen who had a noble conception of life, I think of Lincoln and Wilson. But Wilson was a greater statesman, not only for the world but even for America."' *Ibid*. Smuts' son writes: 'For Wilson's idealism my father had a very high regard. He was not quite so eulogistic about his leadership at Versailles, thinking him too much of a dreamer and too little of a practical man. The rough-and-tumble of the Conference diplomacy was a little beyond his control. And about him he had grouped a series of advisers who left much to be desired. But for all that my father thought Wilson a greater man than Lincoln.' JC Smuts *Jan Christian Smuts: A biography* (1952) 203. Wilson thought Smuts 'an extraordinary person,' and pronounced him a 'brick.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 58; M MacMillan *Paris 1919: Six months that changed the world* (2001) 90. Curry describes how each man has a dramatic and lasting impact on the other's thoughts and actions: 'When the stricken President, less than a month before his retirement from the White House, wrote to be what proved a final note to Smuts acknowledging a copy of the latter's laudatory article, "Woodrow Wilson's Place in History," he told the author this tribute had given him "the greatest gratification." Wilson added, with unusual warmth, "I know of no one whose good opinion I value more than I value yours." While this communication was not lengthy or expansive, its tone indicates that the enigmatic Wilson was addressing someone whom he regarded as a genuine friend [fn 1: . . . Wilson signed himself, "with the most cordial and affectionate good wishes"]. And when Smuts . . . repudiated [John Maynard Keynes'] derisive view of Wilson's character and achievements, substituting his own judgment, "the noblest figure - perhaps the only noble - figure in the history of the war," it appears that he too goes further than mere phrasemaking.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 968.

[807] 'Much in Smuts's view on international politics was bound to appeal to Wilson,' observes Mazower: 'Both men were instinctive moralists, idealizing the power of communal ethics over the selfish pursuit of state or sectional interests, convinced above all that the sources of conflict vanished when men of lofty judgment approached things as a whole. The rhetoric of both men could inspire their followers and baffle their enemies.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 44. In *Governing the world*, Mazower also states that: 'Wilson liked Smuts' radicalism, his decisive break with the past . . .' M Mazower *Governing the world: The history of an idea* (2012) 134. Smith deduces that: 'Both were scholars, both puritans and idealists . . .' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97. MacMillan synthesises the ideological commonalities between the two statesmen thus: 'He [Smuts] had . . . precisely the sort of personal qualities to appeal to Wilson, because they were so much like his own: a fondness for dealing with the great questions, deep religious and ethical convictions, and the desire to make the world a better place.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 88.

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commonality in background[808] and temperament,[809] and even to their

[808] MacMillan mentions that both had grown up in stable, happy families in small communities, 'Wilson in the American South, Smuts in the settled Boer farming community of the Cape.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 88. MacMillan continues: 'Both had fond memories of happy black servants (although both doubted that blacks would ever be the equals of whites) and unhappy memories of war, Civil in Wilson's case and Boers against British in Smuts's.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 88.

[809] Millin compares the two men temperamentally at length: 'They were both, to begin with, professed democrats with the heart of aristocrats. They were both puritans and idealists who yet could bend to compromise. They were equally shy, proud, secretive, lonely by instinct, at the same time affronted by disloyalty, and also magnetic.' SG Millin *General Smuts volume 2* (1936) 175. MacMillan writes that: "Both were sober and restrained on the surface, passionate and sensitive underneath. Both combined vast self-righteousness with huge ambition. Both were quick to see the inconsistencies in others while remaining blind to their own.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 88. Significantly, Millin describes a comment by Wilson's closest advisor, House, to the effect that 'Wilson's character was so difficult, complex and contradictory that it was impossible to judge him.' SG Millin *General Smuts volume 2* (1936) 175. MacMillan also expounds upon this theme by explaining that Wilson remained 'puzzling' in a way that his British and French counterparts, Lloyd George and Clemenceau, his close colleagues in Paris, did not: ' What is one to make of a leader who drew on the most noble language of the Bible yet was so ruthless with those who crossed him? Who loved democracy but despised most of his fellow politicians? Who wanted to serve humanity but had so few personal relationships? Was he, as Teddy Roosevelt thought, "as insincere and cold-blooded an opportunist as we have ever had in the Presidency?" Or was he, as Baker believed, one of those rare idealists, like Calvin or Cromwell, "who from time to time have appeared upon the earth & for a moment, in burst of strange power, have temporarily lifted erring mankind to a higher pitch of contentment than it was quite equal to?"' M MacMillan *Paris 1919: Six months that changed the world* (2001) 6. 'Smuts' character is even more difficult, complex and contradictory,' asserts Millin: 'His platitudes jostle his profundities. His cynicism laughs at his idealism. He is dependable and also incalculable. In the midst of all his higher truth - high above ordinary heads and also sometimes above mundane use - suddenly a chunk of earthy sense. Accident? Knowledge? Genius? That is what puzzles South Africans. Smuts is as strange to South Africans as Wilson was to Americans. Sometimes they feel themselves charmed to a standstill by him, and then suddenly they feel that there he is before them in the flesh but yet he has disappeared: doesn't see them, know them, want them . . . Perhaps, really, in the day by day, grasses have been a greater consolation to Smuts than people.' SG Millin *General Smuts volume 2* (1936) 175 - 176.

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status as outsiders.[810] However, these commonalities pale into superficiality when one considers the profound intellectual communion between Smuts and Wilson with regard to international organisation.

4.1 Organicist, evolutionary theory of international politics

Both statesmen were deeply devoted to an organicist, evolutionary theory of international political development,[811] pursuant to which polities were organic entities, unconstrained and spontaneously growing.[812] They evolved through progressive historical development, not through artificially constructed constitutional arrangements.[813]

In the international arena, Wilson saw the foundation of a 'global polity.'[814] The league was to be the 'embryo that would grow, inch by inch, to maturity.'[815] He regarded

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[810] Mazower suggests that Wilson 'perhaps liked [Smuts'] anticolonial credentials . . .' So, too, Smith remarks: 'Wilson, distrustful of European statesmanship, could more easily trust Smuts simply because he was not European.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97. Curry writes that Wilson took with him across the Atlantic a 'marked distrust of European leadership which was probably as much distorted as European notions of him as a smug, sentimental dreamer.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 973. Wilson 'was, of course, an ardent believer in the unique destiny and mission of the United States, in the concept of its political purity and apartness which found majestic expression in Lincoln's phrase "the best hope of the world" . . .' *Ibid*. MacMillan likewise mentions the 'complicated attitude' that the Americans had to the Europeans: '[A] mixture of admiration for their past accomplishments, a conviction that the Allies would have been lost without the United States and a suspicion that, if the Americans were not careful, the wily Europeans would pull them into their toils again. As they prepared for the Peace Conference, the American delegates suspected that the French and the British were already preparing their traps.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 14. Curry quotes Wilson as declaring, en route to Europe: 'I gather that these men [Lloyd George and Clemenceau] have agreed on a definite program . . . They are planning to take what they can as a matter of spoils, regardless of either the ethics or the practical aspects of the proceeding . . .' Wilson as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 973.

[811] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 343. Mazower describes Smuts as an 'evolutionist in politics,' rather like Wilson. M Mazower *Governing the world: The history of an idea* (2012) 132.

[812] Wertheim explains Wilson's organicist political philosophy as follows: 'Wilson believed law and institutions must never strangle the spontaneous growth of society . . . Neither paper contracts nor armed force made a nation; only thick bonds of solidarity among people did.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 345. Wilson's organicist thinking was grounded in the English Historical School, particularly the philosophy of Edmund Burke and Walter Bagehot. *Ibid*.

[813] *Ibid*; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 15; S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801.

[814] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 345.

[815] *Ibid*.

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political institutions as 'organic and evolutionary manifestations of the collective will.'[816] On 14 February 1919, after Wilson presented the draft Covenant of the League of Nations to a Plenary Session of the Conference, he said to his wife:[817]

> This is our first real step forward, for I now realise, more than ever before, that once established, the League can arbitrate and correct mistakes which are inevitable in the treaty we are trying to make at this time.

In *A practical suggestion*, Smuts stated: 'Europe has been reduced to its original atoms . . . The creative process in the political movement of humanity cannot be paralyzed . . .'[818] Referring to the 'grand success' of the British Empire, Smuts posited that it did not follow any 'constitutional precedent,' but that it 'met a new situation in history with a new creation in law,' and as a matter of fact it 'grew empirically and organically' out of the practical necessities of the colonial situation.[819]

Smuts' organicist and evolutionary understanding of political development demanded a capacious conception of the constitution of the league. It should eschew 'all rigidity' and should be 'elastic and capable of growth, expansion, and adaption to the needs which the new organ of government will have to meet in the process of the years.'[820] Already on 14 May 1917, Smuts stated at a meeting of the League of Nations Society:[821]

> I would favour something more elastic, something more flexible, something which will be capable of adapting itself to the very complex circumstances which arise from time to time in our complex European relations.

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[816] M Mazower *Governing the world: The history of an idea* (2012) 119.

[817] Wilson as quoted in A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 59.

[818] JC Smuts *The League of Nations: A practical suggestion* (1918) 10.

[819] *Ibid* 31. Interestingly, already in 1886, Wilson had 'identified supranational confederation as a historical *telos*.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 352. 'There was,' Wilson wrote, 'a tendency as yet dim, but already steadily impulsive and clearly destined to prevail towards, first, the confederation of parts of empires like British, and finally the great states themselves.' Wilson quoted in *Ibid*.

[820] JC Smuts *The League of Nations: A practical suggestion* (1918) 31.

[821] JC Smuts *War-time speeches* (1917) 62 - 63.

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In presenting the draft Covenant of the League of Nations to a Plenary Session of the Peace Conference on 14 February 1919, President Wilson declared, in strikingly similar terms:[822]

> The League is not a straight-jacket, but a vehicle of life. A living thing is born, and we must see to it that the clothes we put upon it do not hamper it - a vehicle of power, but a vehicle in which power may be varied at the discretion of those who exercise it and in accordance with the changing circumstances of the time.

According to Wertheim, Wilson viewed the League as an 'anti-institutional institution - never too fixed, constantly remolding itself around the vital forces of society, which were the vital forces of history.'[823]

4.2 Anti-legalist theory of international politics

Both Smuts and Wilson rejected the legalist-sanctionist schemes for a league that were popular in the United States, under patronage of former presidents, Theodore Roosevelt and William Howard Taft, and Republican senator, Elihu Root.[824]

Generally, the legalist-sanctionist movement sought to establish a league, the essential features of which were the development of international law and the obligatory

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[822] Wilson as quoted in FP Walters *A history of the League of Nations volume 1* (1952) 1; See also S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 829.

[823] S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 829. 'Wilson wanted one thing most of all: that the League stay plastic enough to hew to the world's unfolding moral spirit.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 354. 'To [Wilson the league] was so eminently a rational idea, the need for it so widely accepted,' comments MacMillan, 'that it would grow on its own into a healthy organism.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 87. MacMillan continues to quote Wilson as stating to his colleagues on the League Commission: 'Gentleman, I have no doubt that the next generation will be made up of men as intelligent as you or I, and I think we can trust the League to manage its own affairs.' Wilson as quoted in *Ibid*. Stromberg marvels at the fact that Wilson, whose mind was usually a highly rational one, 'took refuge in a mystical faith on the matter of the League.' RN Stromberg 'Uncertainties and obscurities about the League of Nations' (1972) 33 *Journal of the History of Ideas* 152. 'The celebrated remarks that burst from him [Wilson] upon completion of the covenant are revealing enough: "There is a pulse of sympathy in it. There is compulsion of conscience throughout it . . . It is intended to purify, to elevate."' Wilson as quoted in *Ibid*.

[824] The most powerful promoter of the legalist-sanctionist designs for the league was the League to Enforce Peace, founded in June of 1915 under former President Taft's leadership, and soon became 'the world's largest pro-league organization.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 353.

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enforcement of judicial settlement of disputes.[825] For the legalist-sanctionists, an international court, and not a political council, was the institutional centrepiece of the league.[826] The legalist-sanctionists modelled their league, not on the British Commonwealth, but on the Hague Conferences of 1899 and 1907.[827]

"President Wilson seemed surprisingly close in his views,' Mazower points out, 'not to the lawyers who had been so prominent in U.S. administrations in the past few years, but to the radical internationalists.'[828] For Wilson, the Hague Conferences were an unmitigated failure.[829] The idea that peace was possible as long as 'the lawyers got the details right struck him [Wilson] as absurd.'[830]

The legalist-sanctionists had it backward.[831] The formal social contract was a perilous fiction. Polities materialised and matured organically through the progressive

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[825] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 351. See also generally S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 210 - 232; S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 797 - 836. Wertheim summarises the essential difference between legalism and sanctionism, on the one hand, and Wilsonianism, on the other: 'Legalist-sanctionists . . . prioritized the accretion of law, as decided by courts and backed by force; Wilson, the accretion of habit, as divined and proclaimed by politicians.' S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 832. The legalist-sanctionists followed a 'concrete logic' that necessitated discernible, explicit obligations upon member nations that could be followed and compelled. *Ibid* 802. Wertheim sets the legalist-sanctionists' concrete logic against Wilson's 'aspirational logic, which valued broad moral declarations supposedly expressing the common consciousness of mankind.' *Ibid*.

[826] S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 215.

[827] *Ibid* 224. The Hague Conferences of 1899 and 1908 were multilateral attempts to establish a permanent framework for the pacific settlement of disputes through recourse to a judicial body. See, for example, SJ Hemleben *Plans for world peace through six centuries* (1943) 125 *et seq*.

[828] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 43. Wilson's Fourteen Points were indeed a resounding break with the past traditions in United States foreign relations. On 9 January 1918, the day following Wilson's address to Congress, one of the chief opposition papers, *New York Tribune*, wrote: 'In a single speech he [President Wilson] has transformed the whole character and broken with all the tradition of American foreign policy.' As quoted in FP Walters *A history of the League of Nations volume 1* (1952) 20. Wertheim observes: 'Wilson's program was unquestionably visionary. But international law was peripheral to that vision.' S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 818.

[829] *Ibid* 825.

[830] M Mazower *Governing the world: The history of an idea* (2012) 121.

[831] M Mazower *Governing the world: The history of an idea* (2012) 121; S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801.

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evolution of human society,[832] not through constitutional assurances.[833] The accumulation of social habit propelled growth and progress; law, however, passively codified the results.[834] Formal legal commitments should never tread underfoot 'the spontaneous growth of society.'[835]

Wertheim aptly summarises Wilson's aversion to the legalist-sanctionist paradigm as follows: 'Strict legal commitments were too confining, disruptive of history's trajectory towards democratization and fellow-feeling.'[836] Mazower puts it thus:[837]

> Unlike Elihu Root or even his own predecessor William Howard Taft, Wilson wanted to keep power with the politicians rather than give it to the lawyers, and he made sure his League would be a forum for quasi-parliamentary deliberations rather than a judicial court to deliver verdicts.

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[832] M Mazower *Governing the world: The history of an idea* (2012) 121. Sharp refers to Wilson as an 'unrepentant Gladstonian liberal with a fundamental belief in the perfectability [sic] of mankind . . .' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 14. Wertheim also describes Wilson's philosophy of history as a teleological faith in human progress: '[H]istory brought inexorable progress and moved through linear stages towards a discernable [sic] end.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 346.

[833] S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801. Mazower expresses Wilson's opposition to a legalist-sanctionist league as follows: 'For the president they were all on the wrong track. What really mattered were not institutions and legal codes, but mental attitudes and values. The son of a Presbyterian minister, Wilson thought in biblical terms of covenants, not contracts, and he sought to build something that would grow organically over time to meet mankind's universal aspirations, not the interests of a few powers who could probably get along anyway . . . Words functioned to inspire, not to delimit . . . [A]lthough he made occasional politic noises in support of the League to Enforce Peace, Wilson talked and thought in an entirely different language, one that was inspired by the Presbyterian covenant theology of his father and the Social Gospel movement.' M Mazower *Governing the world: The history of an idea* (2012) 121 - 122. In this regard, Harold Nicolson also states: 'The President, it must be remembered, was the descendant of Covenanters, the inheritor of a more immediate presbyterian tradition.' H Nicolson *Peacemaking 1919: Being reminiscences of the Paris peace conference* (1933) 198.

[834] S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801.

[835] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 345; S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801. Wilson's views on the construction of a world polity had their roots in his philosophical rumination about the political system of the United States: 'Inspired by historicists such as Edmund Burke, Walter Bagehot, and, less directly, Hegel, Wilson had long worried that the American system of government, with its formal Constitution, and natural rights-enshrining Declaration of Independence, struck his countrymen as an "artificial structure, resting on contract only." "Our national life has been made to seem the manufacture of lawyers," Wilson complained. The Constitution merely encased what truly mattered: the "deep reality of national character," the "heartblood of one people," who should feel free to discard and recreate the Constitution at will.' *Ibid* 828; S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 345 - 346.

[836] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 354.

[837] M Mazower *Governing the world: The history of an idea* (2012) 119.

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On learning that American legal experts at Paris had started drafting the Covenant, Wilson scoffed: 'Who authorized them to do this? I don't want lawyers drafting this treaty.'[838]

Smuts' organicist teleology likewise caused him to shun legalist-sanctionist schemes for a league of nations as too mechanistic, legalistic, and based on formal obligations:[839]

> [I]t seems to me that some people expect too much from the new machinery of international Arbitration and Conciliation which emerges as the chief proposal for preventing future wars. War is a symptom of deep-seated evils: it is a disease or growth out of social or political conditions . . . Hence it is that I have argued all through this discussion for an inner transformation of international conditions and institutions . . . The League must be much more than new Councils to provide for Arbitration and Conciliation in future troubles . . . It must be an organic change; it must be woven into the very texture of our political system.

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[838] Wilson as quoted in S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 829; See also S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 353. Curry quotes from Robert Lansing's diary of 9 and 10 January 1919: 'A very unsatisfactory session. Pres't apparently resents anybody offering suggestions or doing anything in the way of drafting a treaty for a League of Nations except himself. Speaking of draft of articles by Scott & Miller, he said he did not want lawyers to be engaged in that.' Lansing as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 978. Howard-Ellis confirms that Wilson had a 'contempt for lawyers and the legal attitude in general, and distrusted what he called 'mere machinery.' C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 70 - 71. Wilson dismissed lawyers as 'relics.' S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 799. In an address at the Metropolitan Opera House in New York City, Wilson stated: 'Law in a moving, vital society grows old, obsolete, impossible, item by item.' Wilson as quoted in *Ibid* 829. As Wertheim argues, Wilson's attitude to the law and lawyers 'was inspired by more than a facile disdain for lawyers rooted in his own unhappy stint practicing law . . . It was out of settled intellectual conviction that Wilson designed the League of Nations to center on the expedient proclamations of political councils, not on legal rulings backed by automatic sanctions.' *Ibid* 830; S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 353. Wilson's program, as first articulated in his Fourteen Points, was 'unquestioningly visionary. But international law was peripheral to the vision.' S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 818. In his own first draft (the 'Magnolia draft') of a Covenant, Wilson conspicuously failed to include any provision for an international court, notwithstanding the recommendation of House, apparently after conferences with Elihu Root, that a court was a 'necessary part of the machinery'. Instead of a court, Wilson opted for the 'political' system of settling disputes. Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 78 - 79. Howard Ellis continues: 'Wilson . . . added to his general distrust of lawyers a particular dislike of Elihu Root.' *Ibid* 79. Wertheim also points out that Wilson, at the outset, fought tooth and nail against the Covenant simply mentioning an international court. However, '[e]ventually, under French and British pressure, he bent that far, but he dismissed anything substantial, including French legalist-sanctionist proposals, similar to American Republicans.' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 353.

[839] JC Smuts *The League of Nations: A practical suggestion* (191'8) 46 - 47. Kennedy draws a sharp distinction between Smuts' plan for the league, which Kennedy refers to as 'overtly political,' and the 'more legalistic plans of the wartime agitators.' D Kennedy 'The move to institutions' (1987) 8 *Cardozo Law Review* 875.

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Far too much stress has been laid in the past on 'instruments of government,' Smuts argued.[840] He continued:[841]

> Where you build up a common patriotism and a common ideal, the instruments of government will not be a thing that matters so much as the spirit which actuates the whole.

An insistence on mere formal law-making irked Smuts:[842]

> I think there is always a temptation for reformers to believe in paper and machinery . . . When we have a law on the statute book we think we have carried our reform, and then we fold our hands and we allow the thing to go by itself.

Smuts was troubled by the fact that the other proposals for a league of nations simulated to a great extent the legalistic character of *ante bellum* international politics. Therefore, what was needed was not a 'body that will merely pass judgment and see that it is carried out,' but one that will 'liberate those forces of progress which must have an outlet . . '[843]

'The new *motif* of peace,' Smuts advocated in *A practical suggestion*, 'must in future operate internally, constantly, inevitably, from the very heart of our political organisation, and must . . . flow from the nature of things political.'[844] For Smuts, the British Commonwealth of Nations was the prime example of a polity that successfully transcended the 'old legalistic idea of political sovereignty based on force,' to arrive at the 'new social idea of constitutional freedom, based on consent.'[845]

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[840] JC Smuts *War-time speeches* (1917) 37.

[841] *Ibid*.

[842] *Ibid* 60. See also J Kochanek 'Jan Smuts: Metaphysics and the League of Nations' (2012) 39 *History of European Ideas* 269.

[843] JC Smuts *War-time speeches* (1917) 66 - 67. See also J Kochanek 'Jan Smuts: Metaphysics and the League of Nations' (2012) 39 *History of European Ideas* 270. In this regard, Smuts mirrored Wilson's belief in the essentially progressive nature of historical development and the progressive evolution of human society.

[844] JC Smuts *The League of Nations: A practical suggestion* (1918) 47. Smuts continued: 'Then, and not till then, will the impulse to war atrophy and shrivel up, and war itself stand stripped in all its horrible nakedness and lose all the association of romance, all the atmosphere of honour, which has proved so intoxicating and irresistible in the past.' *Ibid*.

[845] JC Smuts *War-time speeches* (1917) vii.

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4.3 Global public opinion in international politics

Both Smuts and Wilson rooted the league's legitimacy in its supposed conformity with the demands of global 'public opinion,'[846] or 'the spirit of the age,' as Wilson sometimes termed it.[847]

Wilson believed that man was fundamentally good, and that the cumulative free expression of the will of men would be a propitious force.[848] Highly doubtful of the efficacy of international law without any change in peoples' minds, Wilson forcefully espoused the reign of public opinion; he was going to make the world 'safe for democracy,' and speak to the populations of Europe 'over the heads of their rulers.'[849] Wilson declared to the League of Nations Commission:[850]

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[846] See S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 831.

[847] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 350.

[848] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 14. 'An informed, rational and impartial public would restrain governments from wild and violent actions and unreasonable demands.' *Ibid*.

[849] Wilson as quoted in M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 43. Harold Nicolson describes Wilson as 'visualis[ing] himself . . . as the prophet of humanity, as an ambassador accredited to righteousness by all the world.' H Nicolson *Peacemaking 1919: Being reminiscences of the Paris peace conference* (1933) 196. MacMillan confirms that: 'Throughout the Peace Conference he [Wilson] clung to the belief that he spoke for the masses and that, if only he could reach them - whether French, Italian or even Russian - they would rally to his views.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 9. 'Wilson's ideal of politics,' Mazower argues, 'underpinned his commitment - a deeply elitist commitment - to democracy and public opinion as the bedrock of any living political order.' M Mazower *Governing the world: The history of an idea* (2012) 126. Elsewhere, Mazower again confirms Wilson's fundamental belief in global public opinion: 'Wilson was both an elitist and and optimist about the progressive evolution of human society, he was happy to trust in the political instincts of the peoples of the world as expressed by their representatives.' *Ibid* 122.

[850] S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 225. Wertheim astutely points out that, beneath its 'egalitarian veneer', Wilson's 'vaunted public opinion' was 'shot through with paternalism': 'Wilson echoed Bluntschli's view that the will of the state is "the one national will, which is different from the average will of the multitude" - . . . emphatically not summed mass preferences. Wilson called it "ridiculous" to think that the people had a well-formed, prevalent opinion on each political issue . . . the masses were too fickle and thoughtless to be followed . . . Leaders, as he wrote, had to "distinguish the firm and progressive popular *thought* from the momentary and whimsical popular *mood*, the transitory or mistaken popular passion" . . . The leader "must have such sympathetic and penetrative insight as shall enable him to discern quite unerringly the motives which moves other men *in the mass*" . . . In his view, leaders had wide latitude to shape public desires and ignore the public's actual preferences . . . "Men are as clay in the hands of the consummate leader," Wilson wrote. "How we *cheat* ourselves by living in subjection to public opinion when *we might make it*!"' S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 349, 350, 351.

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> Every public declaration constitutes a moral obligation, and the decision of the court of public opinion will be much more effective than that of any tribunal in the world, since it is more powerful and is able to register its effect in the face of technicalities.

Smuts, too, earnestly believed in the role that public opinion played in democracy:'[851]

> Far too much stress has been laid in the past on the instruments of government. People are inclined to forget that the world is growing more democratic, and that public opinion and forces finding expression in public opinion are going to be far more powerful than they have been in the past.

Smuts was convinced that the war had led to:[852]

> [T]he creation of a better feeling in the hearts of men - the passion which ha[d] been burnt into millions of minds and hearts, that this state of affairs should never be tolerated again.

'The horrors and sufferings of this war,' Smuts contended, had 'produced a temper in the peoples which much be reckoned with as the fundamental fact of the political situation in Europe to-day.'[853] He believed that the war had 'ripened public opinion for a far-reaching change.'[854]

The lesson to be learned from the war was that 'we are dealing not merely with institutions or with treaties, or with laws.'[855] Indeed, the foundation of future world peace was a 'strong, healthy, sound public opinion . . . which will see that Governments are kept in order . . .'[856]

4.4 A moral paradigm of international politics

The pronouncements of both men on a league of nations were of a conspicuously moral character.

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[851] JC Smuts *War-time speeches* (1917) 37.

[852] *Ibid* 58 - 59, 57.

[853] JC Smuts *The League of Nations: A practical suggestion* (1918) 13.

[854] *Ibid* 47.

[855] JC Smuts *War-time speeches* (1917) 60 - 61.

[856] *Ibid* 47. Similar to that of Wilson, Smuts' view of public opinion was paternalistic. Not only does public opinion demand the creation of a league of nations, but once established, the league will 'become a most powerful and influential factor in moulding international public opinion.' JC Smuts *The League of Nations: A practical suggestion* (1918) 36.

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Smuts entreated the people of Europe that what they should aim for was 'not merely a military victory, but still more . . . a moral victory as w[ould] become a steadfast basis for the new order of things.'[857] Smuts warned the 'Entente statesmen' against 'wounding the spirit of their peoples by a peace that gives the final death-blow to their hopes of a better world.'[858]

He continued: 'For the common people in all lands this war ha[d] . . . been a war of ideals, a spiritual war.'[859] Smuts pleaded for the peace to be founded in 'human ideals, in principles of freedom and equality.'[860] Smuts affirmed that the 'psychological and moral conditions' were auspicious for a great change.[861] In the foreword to *War-time speeches*, Smuts wrote:[862]

> The military aspects of the war so absorb our attention that we are apt to forget the still more important moral aspects and to overlook the fact that the suffering of such multitudes is slowly but surely working a great psychological change, which will lead to results far beyond any that were contemplated at the beginning of the war.

He concluded *A Practical Suggestion* by expressing the aspiration that the league would be to all people 'the embodiment and living expression of the moral and spiritual unity of the human race.'[863]

As stated, Wilson is widely credited with injecting moral considerations into American foreign relations.[864] Even more important than the specific content of the Fourteen Points,

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[857] JC Smuts *War-time speeches* (1917) vi.

[858] JC Smuts *The League of Nations: A practical suggestion* (1918) 14.

[859] *Ibid*.

[860] *Ibid* 14.

[861] *Ibid* 49.

[862] JC Smuts *War-time speeches* (1917) vi.

[863] JC Smuts *The League of Nations: A practical suggestion* (1918) 71.

[864] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 344. From an 1885 essay he wrote on the *Modern democratic state*, it is clear that Wilson viewed democratic politics as 'a sphere of moral action.' Wilson as quoted in M Mazower *Governing the world: The history of an idea* (2012) 121.

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argues Alan Sharp, was their 'high moral tone.'[865] Wilson embraced a league consisting of diffuse moral norms, not one of definite legal obligations.[866] Wilson's league was going to depend on 'one great force' - 'the moral force of the public opinion of the world.'[867]

In words that might as well have been uttered by Smuts, Wilson said: 'The new things in the world are the things that are divorced from force. They are the moral compulsions of the human conscience.'[868] In Wilson's view, moral obligations - binding in conscious only, not in law - were more reverential and powerful than legal obligations.[869]

4.5 The tension between international interests and state sovereignty

Smuts and Wilson also shared a common belief that, ultimately, the tension between the coercive power of the league (common interests) and state sovereignty (national interests) would be resolved.

Wilson believed that history would cause the increasing harmony over time of national and common interests.[870] In January of 1917, Wilson stated in a speech: 'There must be, not a balance of power, but a community of power; not organized rivalries but organized, common peace.'[871] A community of power would exist:

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[865] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 15. MacMillan comments: 'Wilson wanted power and he wanted to do great works. What brought these two sides of his character together was his ability, self-deception perhaps, to frame his decisions so that they became no merely necessary, but morally right.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 6.

[866] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 354.

[867] S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 801.

[868] Wilson as quoted in SG Millin *General Smuts volume 2* (1936) 177.

[869] S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 225. '[A] moral obligation is of course superior to a legal obligation, and, if I may say so, has greater binding force,' Wilson proclaimed to the American Senate. S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 831. To the Paris Peace Conference, Wilson stated: 'Every public declaration constitutes a moral obligation, and the decision of the court of public opinion will be much more effective that that of any tribunal in the world, since it is more powerful and is able to register its effect in the face of technicalities.' Wilson as quoted in S Wertheim 'The League of Nations: A retreat from international law?' (2012) 7 *Journal of Global History* 225.

[870] S Wertheim 'The Wilsonian chimera: Why debating Wilson's vision hasn't saved American foreign relations' (2011) 10 *White House Studies* 351.

[871] Wilson as quoted in *Ibid.*

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> [W]hen all unite to act in the same sense and with the same purpose, all act in the common interest and are free to live their own lives under common protection

By 1918, the 'demise of narrow self-interest became Wilson's refrain.'[872] In September of 1918, he professed that 'the common will of mankind' had been 'substituted for the particular purposes of individual states.'[873]

For Smuts, Holism would resolve the tension between international interests and state sovereignty.[874] The very materialisation of a League suggested to Smuts that the desire for sovereignty had been transcended:[875]

> [T]he League of Nations, the chief constructive outcome of the Great War, is but the expression of the deeply-felt aspiration towards a more stable holistic human society. And the faith has been strengthened in me that . . . Holism is at work even in the conflicts and confusions of men; that in spite of all appearances to the contrary, eventual victory is serenely and securely waiting, and that the immeasurable sacrifices have not been in vain.

5. A *realpolitik* calculation

That there existed a profound intellectual rapport between the two statesman regarding the nature and structure of international organisation is beyond cavil. It is, however, also difficult to avoid the conclusion that there was an unequivocal, yet unexpressed (at least publicly), *realpolitik* calculation behind Smuts' inspiring exhortations.

It is certainly not beyond the pale that Smuts wrote *A practical suggestion* with a very specific audience in mind - President Woodrow Wilson. As has been shown above, much of what Smuts had said during the war with regard to a league of nations was 'Wilsonian in spirit and purpose.'[876]

In his letter of commendation to Smuts after having reviewed an advance copy of Smuts' pamphlet, Lord Loreburn astutely observed: 'I feel quite confident that President

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[872] *Ibid*.

[873] Wilson as quoted in *Ibid*.

[874] J Kochanek 'Jan Smuts: Metaphysics and the League of Nations' (2012) 39 *History of European Ideas* 279 - 280.

[875] JC Smuts *Holism and evolution* (1926) 344.

[876] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 969.

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Wilson will agree with you.'[877] Millin reminds us that, prior to the Paris Peace Conference, Smuts saw Wilson 'only as a means to an end.'[878] When Smuts introduced *A practical suggestion* to the Imperial War Cabinet, suggests Curry, 'he spoke as though he had the probable reaction of the American President in mind'[879]:[880]

> President Wilson is fighting for a League of Nations. If he can go back form the Peace Conference with this point in his favour . . . he will go a long way to meet us on particular points and help our program . . . I would therefore try to get America into European politics . . . We must from the very start of the conference co-operate with America, and encourage and support President Wilson as far as is consistent with our own interests . . . I suggest that we could best siganlise that co-operation by supporting President Wilson's policy of a League of Nations, and indeed by going further and giving form and substance to his rather nebulous ideas . . . [I[f he could go back to America with the League of Nations realised . . . I believe he . . . will be prepared to drop some of the contentious points he has unfortunately raised. My suggestion is that we should tell him frankly at the beginning that we are going to support him most fully on the League of Nations . . . The League of Nations supplies the key to most of the new troubles . . . and it will bring America to our side in the policies of the future . . .[881]

Smuts was one of the architects of the avowed British strategy, formulated in late December of 1918, to cooperate with President Wilson on the league idea. Lloyd George had argued on Christmas Eve of 1918 that Wilson's 'total commitment to the league cause could be used as a bargaining tactic to realize British objectives in other more critical

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[877] Lord Loreburn to Smuts 22 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 32.

[878] SG Millin *General Smuts volume 2* (1936) 170.

[879] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 971.

[880] Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 170 - 171.

[881] However, Smuts' was not only a *realpolitik* calculation. As has been abundantly demonstrated, his idealism and enthusiasm for the League was sincere. Regarding this meeting of the Imperial War Cabinet, George Curry comments: 'His [Smuts'] slighting reference to Wilson's "nebulous ideas" is understandable. Smuts liked to see an idea translated into practical terms. Alone among the delegates, he had arrived at the constitutional convention of the South African Union in 1908 with a completed scheme on paper. But there is no doubt of his general endorsement of Wilson's principles and his readiness to implement them if this was at all within the framework of political reality.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 972.

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spheres.'[882] The Prime Minister had expressed confidence that 'British interests could best be served in cooperation with America.'[883]

Further evidence of Smuts' pandering to Wilson is to be found in the text of *A practical suggestion* itself. President Wilson is the only statesman that Smuts referred to by name, not once, but twice.[884] Moreover, it cannot be a coincidence that Smuts explicitly invoked the president's name in connection with two of the most contentious issues that were likely to arise between Great Britain and United States at the Peace Conference, *i.e.*, the disposal of the German colonies in Africa and the Pacific,[885] and the question of freedom of the seas.[886]

Furthermore, in the very first article of *A practical suggestion*, Smuts advocated that the peace conference:[887]

> [S]hould look upon the setting up of a League of Nations as its primary and basic task . . . Indeed, the Conference should regard itself as the first or preliminary meeting of the League.

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[882] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 437.

[883] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 437. Towards the end of December of 1918, Lloyd George provided the Imperial War Cabinet with an account of a meeting between him and Wilson at Buckingham Palace. With regard to a league of nations, the Prime Minister reported that Wilson's mind was 'apparently traveling in very much the same direction of the proposals advocated by Lord Robert Cecil and General Smuts.' Lloyd George as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 975. Despite the 'promise of complication,' Curry states that the first contact between Wilson and Lloyd George 'was a surprising success, and it may not be too fanciful to suggest that Smuts' memorandum had contributed to the general cordiality.' *Ibid* 976.

[884] JC Smuts *The League of Nations: A practical suggestion* (1918) 15, 42.

[885] Smuts contended that the German colonies in Africa and the Pacific should be disposed of in accordance with the 'principles which President Wilson has laid down in the fifth of his celebrated Fourteen Points.' *Ibid* 15.

[886] 'President Wilson has raised the two-far reaching issues of the freedom of the seas and the establishment of equality of trade conditions by the removal of economic barriers between members of the League.' *Ibid* 42. Smuts attempted to smooth over the seemingly intractable differences between Great Britain and the United States relating to this issue, by suggesting that it should be left to the league to resolve: This question 'will require the most careful study and detailed consideration . . . No body could be better fitted for this investigation by its authority and the resources for study which it will command than the permanent Staff of the Council.' *Ibid* 42 - 43.

[887] *Ibid* 12. Smuts had advocated this position consistently since the spring of 1917. For example, in his address to the League of Nations Society on 14 May 1917, Smuts stated: 'I think it is most important and essential that the fundamental provisions to safeguard peace in future should be included in the peace treaty itself which is made after this war.' JC Smuts *War-time speeches* (1917) 67.

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As was well known at the time Smuts prepared his pamphlet, this was one of Wilson's 'most cherished ideas.'[888]

In the comments on his second article in *A practical suggestion*, Smuts also referred to another of Wilson's venerated concepts. Smuts held that the 'self-determination of nations' should be one of the 'fundamental principles which must guide the league in its territorial policy as the general heir or successor of the defunct empires.'[889] However, as Smuts well knew, the concept of 'self-determination' was easy to state in deference to the American president, but it was also so opaque that it would be virtually impossible to apply.[890]

The guileful Lloyd George ensured that Wilson met Smuts during a dinner hosted by the King on 27 December 1918.[891] At midnight on the same evening, Smuts wrote to Margaret Gillett:[892]

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[888] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 39; DH Miller *The drafting of the Covenant volume 1* (1928) 35. 'Wilson, to whom Lloyd George gave a copy [of Smuts' pamphlet] liked it, not least because Smuts insisted that the making of the League must be the first business of the Peace Conference.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 89 - 90.

[889] JC Smuts *The League of Nations: A practical suggestion* (1918) 12.

[890] As MacMillan relates: 'During the Peace Conference, the head of the American mission in Vienna sent repeated requests to Paris and Washington for an explanation of the term ['self-determination']. No answer ever came. It has never been easy to determine what Wilson meant. "Autonomous development," "the right of those who submit to authority to have a voice in their own governments," "the rights and liberties of small nations" . . .: the phrases had poured out from the White House, an inspiration to peoples around the world. But what did they add up to? . . . The more Wilson's concept of self-determination is examined, the more difficulties appear.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 11. Pomerance comments that: 'The Wilsonian conception of "self-determination" may, obviously, be viewed in a myriad of ways, depending on the angle of the viewer.' M Pomerance 'The United States and self-determination: Perspectives on the Wilsonian conception' (1976) 70 *American Journal of International Law* 2. Wertheim confirms that Wilson's 'broad, vague manner of speaking' left his listeners with widely divergent interpretations. S Wertheim 'The League that wasn't: American designs for a legalist-sanctionist League of Nations and the intellectual origins of international organization, 1914 - 1920' (2011) 35 *Diplomatic History* 831. Robert Lansing asked himself with misgiving: 'When the President talks of "self-determination" what unit has he in mind? Does he mean a race, a territorial area, or a community?' Lansing as quoted in M Pomerance 'The United States and self-determination: Perspectives on the Wilsonian conception' (1976) 70 *American Journal of International Law* 10.

[891] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 97. Curry does not seem to be factually correct in claiming: 'Smuts and Wilson met for the first and last times in Paris . . .' As is clear from Smuts' letter to Margaret Gillett on 27 December 1918 (see immediately succeeding footnote and accompanying text), Smuts and Wilson met at a dinner hosted by the King on 27 December 1918, before either statesman had left for the Peace Conference.

[892] Smuts to MC Gillett 27 December 1918 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 34 (Smuts' emphasis).

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> I have just returned from the King's dinner where I had a good talk with Wilson. He is reading my paper. I told him this was *the* great opportunity in history and the future would write us down very small people if we did not mark a new stage in world government.

Smuts was exultant in the reception that *A practical suggestion* received from Wilson. From Hôtel Majestic in Paris, Smuts wrote to Margaret Gillett on 14 January 1919:[893]

> Lloyd George says Wilson now talks of the *scheme* as if he is the author of it, and may yet give it to the world as his own special creation! Who minds, so long as the work is done. I think there is a special satisfaction in knowing that your will is quietly finding the current of the Great Will, so that, in the end God will do what you ineffectively set out to do.

Smuts wrote enthusiastically to his wife on 15 January 1919: '[M]y pamphlet has made a great impression in high circles, not least on President Wilson.'[894] And, he wrote to Margaret Gillett yet again to let her know of the bearing of *A practical suggestion* on President Wilson:[895]

> The Prime Minister told me today that Wilson told him that my paper had made the deepest impression on him, and he seems to accept my whole programme wholeheartedly. I hope therefore that that my sowing in headaches (if not in tears) has not been in vain and that the reaping will come in God's good time.

The reason for Smuts' apparent attempts at appeasing President Wilson might lie in a simple *realpolitik* calculation: Although, at Paris, Smuts 'wielded an influence far out of proportion to his official position as second representative of a small state in the British empire,'[896] Smuts was well-aware that the centre of power at Paris would be with the 'Big

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[893] Smuts to MC Gillett 14 January 1919 in *Ibid* 41 - 42. (Smuts' emphasis); See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 90. The next day, 15 January, Smuts wrote to Margaret's sister, Alice Clark, in similar terms: 'Wilson has read my pamphlet carefully, and the Prime Minister says he is now beginning to talk enthusiastically of this scheme and will probably end by giving it to the world as his own! Well, as long as the Lord gives the vital growth, I don't care whether it is Paul who plants or Apollos who waters.' Smuts to A Clark 15 January 1919 in *Ibid* 43. See also P Beukes *The holistic Smuts* (1989) 175; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 102.

[894] Smuts to SM Smuts 15 January 1919 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 45. See also P Beukes *The holistic Smuts* (1989) 175.

[895] Smuts to MC Gillett 18 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 47.

[896] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 98.

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Three' - Wilson, Lloyd George, and Clemenceau.[897] If he were to accomplish his objectives, it would be through these men. And, of the three, Smuts' vision for the league was most synergistic with that of Wilson.

[897] Sharp confirms that: 'The real power . . . lay with the Three.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 30. Sharp accounts for the negligible influence of Orlando of Italy as follows: 'Orlando was a member [of the Council of Four], but he tended to be isolated partly because he understood but could not speak English, their normal language of business, and partly because he was never convinced of Italy's credentials to be in such exalted company. When the Council failed to recognise Italy's demands to Fiume on the Adriatic he withdrew from the meetings from 21 April until 7 May. This, and his subsequent return, without real concessions and hence, "fiuming," only emphasised that the effective power lay in the hands of Wilson, Clemenceau and Lloyd George.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 29. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 57 (' . . . the Big Three (Wilson, Lloyd George and Clemenceau - Prime Minister Orlando of Italy playing little part) . . .'

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CHAPTER 4

SMUTS AT PARIS:
'IT HAS EVER BEEN THUS WITH THE PROPHETS . . .'

1. 'Work, and despair not'

When Smuts sailed for Paris with his close friend and collaborator, General Louis Botha, the Prime Minister of the Union of South Africa to represent the Union at the Peace Conference, Viscount Esher wrote to a friend:[898]

> I am glad Smuts is one of the delegates. His contribution to the question [of a league of nations] is the only one that grapples with the principles and details.

[898] Esher as quoted in FS Crafford *Jan Smuts: A biography* (1946) 161.

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Sarah Gertrude Millin records that, according to Smuts, the Peace Conference was the 'unhappiest time' of his life.[899] Smuts' son recalls his father's time in Paris thus:[900]

> To my father his period in Paris was akin to purgatory. The prodigies of work he had been performing for the past months, and was still performing, had left him somewhat jaded, though Colonel House said that of all the delegates he appeared the only one not tired. He lived only for the work of the Conference and shunned the distractions of Paris, in which other delegates found a pleasant outlet. Always it was just his suite in the Hotel Majestic and the Conference tables. And nothing could have been more depressing than those committee rooms, with their interminable wrangles, unabashed greed and inevitable deadlocks. The situation cut across the idealism of my father and shook his faith, though only momentarily, in human nature.

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[899] SG Millin *General Smuts volume 2* (1936) 189. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 215. Smuts was 'discontented and miserable,' adds Crafford. FS Crafford *Jan Smuts: A biography* (1946) 161. '"In Paris," he says, "I met no one outside conference circles. I visited no French home. I saw none of what are considered the gaieties of Paris - nothing of Paris really except a few picture galleries. I was busy all the time and in despair all the time."' Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 189. 'Paris, to Smuts, became the symbol of the unhappiest time in his life. Smuts was a dreamer, and the conference was a nightmare for him.' J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 134. Millin comments on Smuts' mood during this time: 'Had Smuts more reason to be unhappy than his colleagues? . . . His own country, as he himself came to say, had prospered in the war. His family had always been well and safe out of the war. He had become in himself and in the world a big man through the war. He was younger and healthier than his fellows; and by nature so optimistic and vital that as, in his twenties, old men had leaned on him, so still, in his sixties, young men leaned on him. If Smuts was in a mood not only of despair but desperation after the war, certainly the others must have been in an abnormal mood too - for, after all Western civilization was as much their concern as his, and actually nearer their material life.' SG Millin *General Smuts volume 2* (1936) 190. Millin continues: 'Paris itself - the heart of a devastated land, four years the conscious objective of the enemy's triumph . . . was little likely to restore in her hosts and guests a feeling of benevolent placidity.' *Ibid*. Regarding the city of Paris itself, Smuts described it thus to his friend Arthur Gillett: 'Paris is wonderfully subdued; in fact it is now very much as I have seen it during the war, ever since April 1917. They mumble indemnities and annexations or reannexations, but in their heart of hearts they are weary and sad and disappointed. The old gaiety is gone, and a new state of mind has arisen which is very difficult to analyse. There is fear in it too - fear of the dark forces which seem to be gathering in the background and preparing to pull down all the plans of statesmen and soldiers. Meantime we can but do our best and leave the rest to God.' Smuts to AB Gillett 12 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 39. See also K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 102 MacMillan paints a vivid portrait of the French capital in January 1919: 'Paris was sad and beautiful as the peacemakers began to assemble from all parts of the world in January 1919. Its people were subdued and mournful . . . Signs of the war that had just ended were everywhere: the refugees from the devastated regions of the north; the captured German cannon in the Place de la Concorde and the Champs-Elysées; the piles of rubble and boarded up windows where German bombs had fallen. A gaping crater marked the Tuileries rose garden. Along the Grands Boulevards the ranks of chestnuts had gaps where trees had been cut for firewood. The great windows in the cathedral of Notre-Dame were missing their stained glass, which had been stored for safety . . . There were severe shortages of coal, milk and bread. French society bore scars, too. While the flags of victory fluttered from the lampposts and windows, limbless men and demobilized soldiers in worn army uniforms begged for change on street corners; almost every other woman wore mourning . . Neither the British nor the American had wanted the Peace Conference to be in Paris . . . "I never," said Lloyd George later on, when he was particularly annoyed, "wanted to hold the Conference in his [Clemenceau's] capital. Both House and I thought it would be better to hold it in a neutral place, but the old man wept and protested so much that we gave way.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 26 - 27.

[900] JC Smuts *Jan Christian Smuts: A biography* (1952) 215.

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Nevertheless, Smuts, did 'passionately and persistently search out and probe the issues of crucial importance.'[901]

Smuts had reason to be sanguine at the outset. He was now, as he himself put it, 'only the second representative of South Africa.'[902] However, although Smuts might not have been an important person in the official hierarchy, his personal prestige remained 'second to none' due to his military victories, his resolute loyalty to the Empire, his distinguished role in the War Cabinet, and his many outstanding services, all 'fresh in the public mind.'[903] As Antony Lentin remarks: 'His liberal credentials were exceptional.'[904] Moreover, Smuts found enthusiastic support for his plan for a league of nations in President Wilson, at the outset arguably the most powerful figure at the Conference.[905]

Another cause of satisfaction for Smuts was the knowledge that South Africa, along with the other Dominions (Canada, Australia, and New Zealand), would have an independent voice at the peace conference.[906] A 'reluctant'[907] Lloyd George had

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[901] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 505. Smuts' son also maintains that: [T]hroughout the Conference he spared no effort to support the Covenant and to save the peace. He never wearied of the struggle.' JC Smuts *Jan Christian Smuts: A biography* (1952) 206. Likewise, FS Crafford comments: 'In spite of the recriminations of his opponents and the serious setbacks suffered by the League project, Smuts' enthusiasm for the Covenant never showed any signs of abatement . . .' FS Crafford *Jan Smuts: A biography* (1946) 172. ' . . . nor did he spare himself in his efforts to save the peace.' *Ibid* 172.

[902] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 508. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 56.

[903] *Ibid*. See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 508.

[904] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 56. According to Ray Stannard Baker, Smuts 'more than any other man typified British Liberal opinion at Paris.' As quoted in JC Smuts *Jan Christian Smuts: A biography* (1952) 206.

[905] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 56. Ingham writes: 'Wilson had taken up his [Smuts'] plan for a League of Nations and, according to Lloyd George, was inclined to regard it as his own.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 102.

[906] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 56; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 102; JC Smuts *Jan Christian Smuts: A biography* (1952) 212; FS Crafford *Jan Smuts: A biography* (1946) 160; M MacMillan *Paris 1919: Six months that changed the world* (2001) 45.

[907] M MacMillan *Paris 1919: Six months that changed the world* (2001) 45. Crafford also notes that the idea of separate representation for the Dominions 'had not appealed to Lloyd George.' FS Crafford *Jan Smuts: A biography* (1946) 160; See also JC Smuts *Jan Christian Smuts: A biography* (1952) 212 Crafford continues: 'The Foreign Office disapproved of it [separate representation for the Dominions]. So did Winston Churchill. But the Dominions insisted that they had given ample proof of their nationhood during the war and practically demanded representation.' FS Crafford *Jan Smuts: A biography* (1946) 160; See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 45.

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persuaded Wilson and Clemenceau[908] that South Africa, Australia, Canada and India should be permitted to send two plenipotentiaries each to the Peace Conference, and New Zealand one.[909] Smuts argued that it was a matter of 'status,' and:[910]

> [T]heir [the Dominions'] representation at the Peace Conference and their signing of the Treaty would once and for all establish the Dominions in the eyes of the world as equal partners with Mother England in the British Commonwealth of Nations.[911]

Smuts 'marvelled at the transformation of his country's status' in the span of a mere 17 years since the Peace of Vereeniging, which saw the Boer Republics defeated and subjugated. With discernible satisfaction in accomplishment, he wrote to his wife from Paris:[912]

> We are to get two members at the Conference and so will Canada and Australia; so you can see that we have come off very well as we get the same representation as the lesser independent Powers - Belgium, Serbia, etc. While the Nationalists make a noise about our independence we have obtained this - that South Africa takes her place at the Peace Conference among the nations of the world. This is the second time that I appear at a Peace Conference - but how different is the situation in Paris from that at Vereeniging in 1902! There we had to drink the cup to the bitter lees; here South Africa is a

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[908] Wilson was initially opposed to independent Dominion representation, as he thought it subterfuge to increase Britain's voting power. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 56. With regard to American and French opposition to the proposal, MacMillan notes: 'The Americans and the French were cool, seeing only British puppets - and extra British votes.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 45.

[909] *Ibid*.

[910] FS Crafford *Jan Smuts: A biography* (1946) 160. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 212.

[911] 'The dominions knew how important their contribution was, what they had spent in blood,' comments MacMillan. M MacMillan *Paris 1919: Six months that changed the world* (2001) 44. South Africa had certainly earned its place at the negotiating table: '140,000 South Africans had been mobilized and fought on the Western Front and against the Turks as well as in the African campaigns. 9,000 were killed, twice as many, Smuts reckoned, "as our total Boer losses in our war," and 12,000 were wounded. At the Somme in 1916, out of more than 3,000 Springboks who fought in the bloody Battle of Delville Wood, only 768 came out of the wood alive.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 57. Lentin notes that recognition at the Peace Conference was important for another reason: 'General Hertzog was preparing to come to Paris with a deputation of Afrikaner Nationalists to agitate for secession form the Empire in the name of self-determination. Lloyd George himself would hear his claim and dismiss it on the grounds that Hertzog spoke only for the party of opposition. It was essential, however, for Smuts and Botha to consolidate their legitimacy among their own people and to demonstrate that South Africa stood to gain at Paris as a member of the Commonwealth.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 57. With regard to the deputation of Afrikaner nationalists to the peace conference led by General Hertzog, see generally SG Millin *General Smuts volume 2* (1936) 246 - 254; FS Crafford *Jan Smuts: A biography* (1946) 181 - 182.

[912] Smuts to SM Smuts 15 January 1919 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 45.

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> victor among the great nations! I am thankful that it has been granted to me to do my part in this great work and to help to lead my people out of the painful past into the triumphant present.

Smuts' naturally blithesome disposition and the sound reasons for him to be optimistic at the outset of the Peace Conference notwithstanding, he arrived in Paris with a sense of 'foreboding.'[913] On 12 January 1919, he wrote to Alice Clark: 'I am somewhat out of things, and I fear my sympathies are also sadly estranged by some recent developments.'[914]

On 19 January, commenting on the inaugural Plenary Session of the Peace conference at the Quai d'Orsay the previous day, Smuts said in a letter: 'There are many hopeful signs but my mind remains full of anxieties for there are more hidden enemies

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[913] See WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 506. The day after his arrival in Paris, Smuts wrote wistfully to his friend, Arthur Gillett, the banker and husband of Margaret Gillett: '[M]y thoughts today have often crossed over to the hills of Berkshire and Oxford and a feeling of great tenderness and wistfulness have come over me at the thought of the Sunday walks we have had together in that distant past which, here in Paris, seemed to have happened long, long ago in some very far-off country of the soul.' Smuts to AB Gillett 12 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 40.

[914] Smuts to A Clark 12 January 1919 in *Ibid* 39. What 'developments' Smuts was referring to is not clear, and he did not elaborate. With regard to Smuts' position as an 'outsider' after he had resigned from the British War Cabinet, Ingham states: 'While he had been working for the British government, he had been acclaimed on all sides. In Paris he was to operate as an individual. His views were often to conflict with those of the men with whom he had hitherto worked in closest harmony. Soon he was to find himself on the outside, looking in, when important decisions were taken. His vision and idealism, well suited to winning the war, were an ill match for the bitterness, fear, selfishness and sheer short-sightedness which seeped through the committee rooms of the Paris Conference.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 102. Smuts' characteristic enthusiasm, however, did sometimes shine through. On 18 January, his spirits apparently lifted by pleasant weather, he wrote to Margaret Gillett: 'This has been a wonderful day . . . It was like a warm spring day and Lane and I took a long walk in the afternoon in the Bois . . . There was something in the air which made one walk with a higher step than one has done for many a month . . . The air is full of spring and of that curious exhilaration which you feel in the early spring.' Smuts to MC Gillett 18 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 46. However, the very next day he wrote again to Margaret Gillett: 'You must not pay too much attention to the indications of my penmanship; they depend more on my temper and still more on my pen, which are both sometimes ragged.' Smuts to MC Gillett 19 January 1919 in *Ibid* 47.

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than real friends.'[915] The proceedings, and, especially the opening address by the President of the host nation, Raymond Poincaré, left Smuts indignant:[916]

> What a farce that first meeting was! You must have heard the smug Poincaré roll out his periods about Justice! And I thought of wise old Lao Tzu saying: 'The more unrighteous men are, the more they talk of righteousness!' What a poor beginning! Here is a world waiting for the Word; for some crumb of comfort to fall from the table of the great and the wise. And we had nothing to say except punishment for war crimes with which our tempers are already worn threadbare through the agonies of five years!

In his letter of 12 January to Arthur Gillett, Smuts uttered a sentence that became to him a refrain of hope during the period of the peace conference: 'Meantime we can but do our best and leave the rest to God.'[917] Smuts continued:[918]

> Do you know those lines of Goethe at the end of "Past and Present"? . . .
>
> Choose well; your choice is
> Brief and yet endless . . .
>
> Work, and despair not.

If there was indeed a beacon of hope for Smuts at Paris, it was the prospect of contributing to founding of the first international organisation dedicated to the promotion of world peace. Already on 14 January, Smuts could announce that the League of Nations was

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[915] Smuts to MC Gillett 19 January 1919 in *Ibid* 48. On 14 January Smuts' cited the following lines in his letter to Margaret Gillett: '"Speak to these anxious hearts of ours, and teach them to be still!"' Smuts to MC Gillett 14 January 1919 in *Ibid* 42. Smuts was not the only plenipotentiary filled with a sense of disquiet at the commencement of the Peace Conference. On 4 January 1919, General Tasker Bliss, a member of the American delegation, noted in a confidential letter to the American Secretary of War, Newton D Baker: 'Most thinking men here are looking with apprehension on the course being followed by the Allies with respect to Germany . . . Neither England nor France want to see German industrialism and commercialism revived until they themselves are well in the lead . . . But the French want to bring complete and lasting ruin on Germany.' Bliss as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 971.

[916] Smuts to MC Gillett 19 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 47. See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 506; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 57 - 58. Ingham charges that Smuts may have noted the fearful atmosphere in France, but that he had 'underestimated its effect upon the French people who had twice seen their country invaded by the Germans within half a century. Fired by his vision of a community of nations, he understood their feelings as little as he comprehended those of Hertzog and his supporters in South Africa.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 102 - 103.

[917] Smuts to AB Gillett 12 January 1919 in *Ibid* 41. See also, for example, Smuts to A Clark 23 January 1919 in *Ibid* 54 ('However, we can but do what appears best, and leave the rest to God. You know my comfortable creed which leaves most of the burden and the responsibility to Providence.'); Smuts to MC Gillett 27 January 1919 in *Ibid* 88 ('Well, let us do our duty and leave the rest to God. You know that is my religion, and it produces great serenity of mind.').

[918] Smuts to AB Gillett 19 January 1919 in *Ibid* 41.

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'making headway rapidly,'[919] and more dramatically on 19 January that: 'The League has been pushing to the fore very rapidly like a child being born.'[920]

In this and the following chapters, this thesis addresses four particular facets of Smuts' labours at Paris, namely (i) Smuts' work as a member of the Commission on the League of Nations; (ii) his compromise resolution for a system of mandates; (iii) Smuts'

[919] Smuts to MC Gillett 14 January 1919 in *Ibid* 41. On 15 January he reported to Alice Clark that the League of Nations was 'making headway quite well' (Smuts to A Clark 15 January 1919 in *Ibid* 43) and to Mrs Smuts that it was 'progressing well' (Smuts to SM Smuts 15 January 1919 in *Ibid* 45).

[920] Smuts to MC Gillett 14 January 1919 in *Ibid* 48. On 20 January Alice Clark continued the 'infant' metaphor with regard to the League when she wrote to Smuts: 'It looks as though the League of Nations would be brought safely to birth, but the first stages of an infant's life are even more dangerous. I hope every country won't be so much absorbed with its internal difficulties that the new-born babe perishes of neglect.' A Clark to Smuts 20 January 1919 in *Ibid* 50.

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controversial 'legal' opinion with regard to reparations; and (iv) his futile efforts at revision of the Treaty of Versailles.[921]

2. Smuts on the Commission on the League of Nations

At the first Plenary Session of the Peace Conference on 18 January 1919, Smuts and Wilson were observed as having an 'animated and mutually satisfying discussion.'[922] Later that same day, Wilson instructed his physician, Dr. Cary T. Grayson, to put a copy of

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[921] Excluded from this thesis, as falling outside the scope, is Smuts' mission to Hungary to negotiate with the Bolshevist regime of Bela Kun, which occurred during the Paris Conference. Smuts' mission to Hungary is dealt with in detail by Smuts' biographers and League scholars. See, for example, WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 515 - 518; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 70 - 75; SG Millin *General Smuts volume 2* (1936) 196 - 207; JC Smuts *Jan Christian Smuts: A biography* (1952) 209 - 211; FS Crafford *Jan Smuts: A biography* (1946) 175 - 180; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986); M MacMillan *Paris 1919: Six months that changed the world* (2001) 257 - 270; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 147 - 148. Lloyd George proposed Smuts to lead the mission to Budapest. President Wilson apparently 'nodded vigorously and said that he was just the man,' although Smuts' nomination 'did not altogether commend itself to M. Clemenceau.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 71; M MacMillan *Paris 1919: Six months that changed the world* (2001) 263. Smuts reflected on Lloyd George's motives in nominating him for this mission: 'As usual, when I am pressing very hard on his [Lloyd George's] conscience, he wants to send me on some distant mission!' Smuts to MC Gillett 27 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 89. '"A curious business," Sir Henry Wilson, Chief of Imperial General Staff, wrote in his diary: "A Welshman sends a Dutchman to tell a Hungarian not to fight a Rumanian."' Wilson as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 71. Harold Nicolson, one of the young men seconded to Smuts by the Foreign Office and whom Smuts described as a 'brilliant chap,' accompanied Smuts on this mission, and some of its dramatic episodes were recorded in Nicolson's diary, as relayed by Hancock: 'Nicolson, when he woke up in the train in Austria, felt that his "plump, pink face" was an insult to the starved people whom he saw crowding the railway stations, and recorded with delight the rebuke given by Smuts to the British military attaché in Vienna, who had arranged an expensive lunch for the whole party at Sacher's restaurant. "Smuts is furious. He ticks Cunninghame off sharply. He calls it a gross error in taste. He decrees that from now on we shall feed only upon our own army rations and not take anything from these starving countries. His eyes when angry are like steel rods."' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 516 - 517. At Budapest, Kun had requisitioned the Hungaria Hotel for Smuts and his party, 'but Smuts refused to budge from the train' and summoned Kun to confer with him at the railway station. *Ibid*)] 517. Smuts was scrupulous not to give any appearance of official recognition of Kun's regime. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 72. 'On 4 and 5 April Smuts and Kun conferred four times. They came close to agreeing upon a military frontier between Hungary and Rumania . . .' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 517. However, when Kun tried to haggle for extra concessions Smuts cut him short and ordered the train to leave at the precise time that he had notified for their departure, 'leaving the astonished Hungarian standing speechless on the platform.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 73; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 517. Nicolson wrote: 'We glide out into the night, retaining on the retinas of our eyes the picture of four bewildered faces looking up in blank amazement. We then dine. Smuts is delightful, telling us stories of the Veldt with a ring of deep homesickness in his voice. A lovely man.' As quoted in *Ibid*.

[922] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 979. See also IC Smith IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 99.

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Wilson's second Paris draft plan for the league of nations privately into Smuts' hands,[923] with an accompanying note that read:[924]

> My dear General Smuts, It is with real pleasure that I send you the enclosed draft, and looking forward to co-operating with you in perfecting it. Since drafting it I have made some emendations and additions which I shall hope to discuss with you, but they do not affect the larger features of the plan. Cordially and sincerely yours, Woodrow Wilson.

That Smuts enjoyed the President's full confidence is clear from these events, as not even the American plenipotentiaries were privy to Wilson's latest draft.[925]

Smuts was gratified by the reception of his pamphlet, but he was not enamoured of Wilson's second Paris draft:[926]

> One thing . . . is indubitable and that is that that little pamphlet has been a great blow struck for the League. I see it (the blow) everywhere; it has even affected those who are really hostile. Wilson has become enormously keen and wishes me to help him through with it . . . He has drafted a scheme which is practically my twenty-one paragraphs with some alterations, which are most unfortunately not improvements but much the reverse.[927]

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[923] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 979. See also IC Smith IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 99. This was Wilson's third attempt at drafting a league scheme, the so-called 'second Paris draft.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 51; C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 84.

[924] Reproduced in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 48.

[925] Smith states: 'Smuts received this document [Wilson's second Paris draft] which was then not officially available to the British delegation. The fact that Wilson should be influenced by Smuts sufficiently to trust him with a draft of his plan for the League, and to employ back door methods of consultation, showed that Smuts enjoyed the President's real confidence, an element that was completely lacking in Wilson's relationship with his own official advisers.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 99. Wilson only shared his second Paris draft with the American delegation on 20 January. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 62; L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 64 - 65.

[926] Smuts to MC Gillett 19 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 48. For the specific provisions of Wilson's second Paris draft, see generally DH Miller *The drafting of the Covenant volume 2* (1928) 98 - 105; C Howard-Ellis *The origin, structure, and working of the League of Nations* (1928) 84; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 51.

[927] Smuts continued, including lines he often quoted from the poem, 'Faces,' by Walt Whitman (*Leaves of grass*): 'But I feel that I am perhaps too keen and impatient on this matter. The Lord advances and ever advances - but oh! how slow, with what dark shadows and meanderings and retracings!' Smuts to MC Gillett 19 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 48.

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'It's almost entirely Smuts and Phillimore combined,' remarked Cecil upon reviewing Wilson's draft league plan.[928] Curry comments that Wilson's second Paris draft was 'pervaded throughout by Smuts' ideas.'[929] To Margaret Gillett, Smuts wrote:[930]

> [T]he League is . . . making good progress. You may therefore feel that *in the main* the programme of my pamphlet (mine, and yet partly yours!)[931] has a fair chance of being adopted, which is more than I ever anticipated. Colonel House today again told me how they valued my ideas among the Americans and how my exposition had made [them] abandon many of their ideas in favour of mine.

Even before the official promulgation of the League of Nations Commission to draft the Covenant, the British and American delegations consulted 'closely and continuously' regarding the character and constitution of the league.[932] Smuts was fully engaged in this series of informal Anglo-American conferences. In addition to Smuts, the regular attendees at these meetings were Wilson, House, and Cecil. On 20 January 1919, Smuts noted in a letter to Margaret Gillett:[933]

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[928] Cecil as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 58.

[929] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980.

[930] Smuts to MC Gillett 29 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 57 (Smuts' emphasis).

[931] This statement by Smuts seems to accord with Beukes' assertion that: 'There is no doubt that his [Smuts'] Quaker friends and especially the Clark and Gillett families had a profound influence on some of the ideas on a League of Nations to solve the international problems and safeguard the future peace.' P Beukes *The holistic Smuts* (1989) 175.

[932] FP Walters *A history of the League of Nations volume 1* (1952) 32. It was from this exchange of ideas that the draft Covenant emerged. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 52. The official British daft became available to President Wilson on 20 January. 'It was clearly more the work of Cecil than of Smuts,' surmises Curry. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 979. Sharp confirms that the official British draft originated, with minor alterations, from Cecil's *Draft sketch of a League of Nations* that he prepared on 14 January. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 51. It made no provision for mandates, and, in accordance with Cecil's earlier proposal, it limited participation in the league to the Great Powers. Unlike the proposals of Smuts and Wilson, this proposal included a provision for a permanent court of international justice. Cecil opened a new controversy by claiming separate representation in the league for the Dominions and India. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 979; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 51 - 52. 'It was extremely legalistic in tone, contrasting with the expressive prose favored by the President and by Smuts.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 979. Cecil, in turn, was not attracted to Wilson's second Paris draft, which he considered 'verbose.' On 26 January, as he left the President's rooms at the Palais Murat, Cecil complained to Smuts of 'some propositions which appeared obscure and irrelevant.' Cecil as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980 - 981. In relaying this conversation, Curry notes: 'Smuts, who must have been aware that many of his own views and phrases were being indirectly criticized, merely assented. "Nevertheless," he declared, "we must work with it as our basis."' Smuts as quoted in *Ibid* 981.

[933] Smuts to MC Gillett 20 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 49.

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> I spent last night with Wilson till 11:30. He, Lord Robert Cecil and I discussed the League of Nations. His ideas (may I confess it?) seem mostly taken from that pamphlet. Even my mistakes are appropriated. This seriously alarms me, as the papers was very hurriedly written as you know, and many things I would now rather put differently . . . The idea is to workout the Convention or 'Covenant,' as he calls it in remembrance of his Covenanter descent, in full and then get the Conference to pass it formally.[934]

Smuts commented on the broad consensus between Wilson, Cecil and himself regarding the league, and Lloyd George's apparent lack of enthusiasm for his plan at this time:[935]

> I have had long talks with President Wilson who is generally in very strong agreement with me. In fact, he clings tenaciously to some errors in the pamphlet which I have already outgrown . . . There is a great demand for the pamphlet . . . I believe the Americans like it more than my British friends; but it has ever been thus with prophets.

In addition to general exchanges of views, the Anglo-American delegates reached decision on two significant issues, namely to create a common draft of a league covenant that could

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[934] The next day, Smuts could report to Alice Clark that: 'The League of Nations, which is the real business of this Conference, is progressing very well.' Smuts to A Clark 21 January 1919 in *Ibid* 51.

[935] *Ibid*. Cecil noted that the Prime Minister 'did not want to talk about the League of Nations at all, in which he takes no real interest.' Cecil as quoted in L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 65.

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serve as the basis for deliberations;[936] and to put before the peace conference a resolution in favour of inclusion of the Covenant in the treaty of peace.

On 22 January, the Council of Ten[937] duly accepted a British resolution[938] that called for a League of Nations as an 'integral part' of the peace treaty, and that 'should be open

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[936] '[A] broad measure of agreement had been established by these informal sessions, and it was now important, and urgent, to build on this foundation.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 52. Discussions between Cecil and David Hunter Miller, legal advisor to the American delegation, commenced on 21 January. *Ibid*. In consultation with Smuts and Lord Eustace Percy of the Foreign Office, Cecil directed the preparation of amendments to Wilson's draft covenant. L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 67. Working on Wilson's draft of 20 January, Cecil and Miller succeeded in producing a joint draft on 27 January. The task of resolving the remaining differences fell to Cecil and House, 'two men who combined high ideals with great practical experience of international affairs, and each of whom enjoyed and merited the other's confidence.' FP Walters *A history of the League of Nations volume 1* (1952) 32. Hunter Miller and the legal advisor to the British delegation, Sir Cecil Hurst, were instructed to prepare an Anglo-American draft. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53; L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 68; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 41; FP Walters *A history of the League of Nations volume 1* (1952) 32; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 101 - 102. 'Working through the afternoon, night and early morning of 1 and 2 February, Hurst and Miller produced the Hurst-Miller draft,' the documents that were to form the basis for the labours of the League of Nations Commission appointed by the Peace Conference in its resolution of 25 January. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53; See also L Ambrosias 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 68; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 41; FP Walters *A history of the League of Nations volume 1* (1952) 32. 'When the Hurst-Miller draft was presented to him, Wilson complained bitterly that it lacked "warmth and color" and insisted on working through the evening of February 2 to prepare a third draft himself. But House persuaded him at the last moment not to offend Cecil who had done much for the league idea, and Hurst-Miller was allowed to go forward.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 982. See also FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 41.

[937] That is, the heads of government and foreign ministers of Great Britain, France, Italy, the United States, and two delegates of Japan.

[938] Cecil drafted the resolution, Wilson commented upon it, and Lloyd George proposed it before the Council of Ten. G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980; L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 65.

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to every civilised nations which can be relied upon to promote its object.'[939] This resolution was adopted on 25 January 1919 by a Plenary Session of the 32 states and Dominions gathered at the Peace Conference.[940]

The League of Nations Commission was thereupon appointed.[941] Its chairman was the President of the United States, 'by far the most commanding figure in the world at that moment.'[942]

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[939] The full text of the resolution ran as follows:

The Conference, having considered the proposals for a League of Nations, resolves that:

(1) It is essential to the maintenance of the world settlement which the Associated Nations are now met to establish, that a League of Nations be created to promote international co-operation, to insure the fulfilment of accepted international obligations and to promote safeguards against war.

(2) The League should be created as an integral part of the General Treaty of Peace and should be open to every civilised nation which can be relied upon to promote its objects.

(3) The members of the League should periodically meet in international conference and should have a permanent organisation and secretariat to carry on the business of the League in the intervals between the conferences. The Conference therefore appoints a Committee representative of the Associated Governments to work out the details of the constitution and functions of the League.

Reprinted in FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 38 - 39. Walters comments as follows on this resolution: 'The resolution represented a major victory for the American President. It stated in the most affirmative terms that the "associated nations" (it was Wilson himself who objected to the expression "allied") were committed to establish the League, that it was to be an integral part of the peace treaty, one of Wilson's most cherished ideas, and that the League was essential to the maintenance of the peace settlement . . . This meant that neither the Europeans nor the Americans could have the peace treaty without the League or the League without the peace treaty.' FP Walters *A history of the League of Nations volume 1* (1952) 39.

[940] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 507; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 52; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 38; FP Walters *A history of the League of Nations volume 1* (1952) 32; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980; L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 65.

[941] FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 39; FP Walters *A history of the League of Nations volume 1* (1952) 33;

[942] FP Walters *A history of the League of Nations volume 1* (1952) 33. Regarding the Commission's membership, Walters remarks: 'It was on February 3rd, 1919 that the Covenant-making Committee began the intensive series of meetings in which the many plans for the organization of permanent peace were to be refined into a single instrument - an instrument on which the civilized countries of the world, victors, vanquished, and neutrals alike, were counting for their safety and prosperity. The Committee's membership was not unworthy of a body on which so great an honour and responsibility had been laid.' FP Walters *A history of the League of Nations volume 1* (1952) 33. MacMillan quotes Ray Stannard Baker as commenting that the fact that neither Clemenceau nor Lloyd George put himself on the commission, was further proof that Europeans did not take the League seriously. 'They were happy, he said darkly, to see Wilson occupied while they shared out the spoils of war in their customary fashion.' Baker as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 91.

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Smuts and Lord Robert Cecil[943]

[943] The focus of this thesis is the contribution of Smuts, directly and through President Wilson, to the establishment of the League of Nations. This may create the inadvertent, but nevertheless incorrect, impression that Smuts and Wilson were the main protagonists in the struggle for a league. However, three people have earned the title of 'Fathers of the League.' See IL Claude, Jr *Swords into plowshares: The problems and progress of international organization* (1971) 43. The third - and indispensable - member of this trio was Lord Robert Cecil of Chelwood. Although Cecil's contribution does not fall within the scope of this thesis, except tangentially, the author in no way wishes to attenuate his crucial role. Cecil was 'a devout Anglican by conviction, a lawyer by training, a politician by profession and an English aristocrat by birth.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 90. His family, the Cecils, had served Britain since the sixteenth century. Lord Balfour was his cousin. Lord Cecil's father was the 'great skeptic,' Lord Salisbury, Conservative Prime Minister for much of the 1880s and 1890s. *Ibid*; M Mazower *Governing the world: The history of an idea* (2012) 129. Cecil's upbringing, 'at once privileged and austere, created in him a strong sense of right and wrong and an equally strong sense of public duty. When the war broke out, he was fifty, too old to fight, so he volunteered to work for the Red Cross in France. By 1916 he was in charge of the blockade against Germany.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 90. Kraus notes the 'striking' similarities between Smuts and Cecil: Like Smuts, 'Cecil, too, possessed that austere simplicity combined with the most charming manners. His arguments were supported by his almost unbelievable frankness and shining sincerity.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 264. Scholars are universal in their praise for Cecil's championing of the league idea and his contribution to the League's eventual establishment. As but a few examples: 'Robert Cecil . . . was the prime mover of the League idea inside the British government.' M Mazower *Governing the world: The history of an idea* (2012) 129. '[I]t was ultimately to Cecil as much as to Wilson that the League owed its birth.' M Mazower *Governing the world: The history of an idea* (2012) 129. 'In his seminal paper of September-October 1916, Lord Robert Cecil . . . was effectively deputy foreign secretary in both the Asquith and Lloyd George coalitions and . . . the most assiduous promoter of the league idea in Whitehall.' P Yearwood '"On the safe and right lines:" The Lloyd George government and the origins of the League of Nations' (1989) 32 *The Historical Journal* 132. 'In Britain the figure in government most sympathetic to the League of Nations Union was Lord Robert Cecil . . . As early as September 1916 Cecil had circulated in the Foreign Office a scheme for a peace league . . . Soon Cecil, a Conservative by family ties but a liberal and Christian humanitarian by inclination, became passionately committed to the league cause, and after the war he devoted the remainder of his long life to the furtherance of international peace . . . A younger son of . . . Lord Salisbury, Cecil's profound commitment to liberal internationalism was always fused with a conservative's premonition of the dangers that war posed to the moral and social fabric of British and European civilization.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 423 - 424. 'The actual focusing of the attention of the [British] government on the league was in large measure the work of Lord Robert Cecil. In 1916 he submitted a note to the first Coalition cabinet, proposing a scheme to insure the summoning of a conference of powers when it became necessary to consider any international disputes and suggesting the use of force to compel delay until such disputes had been presented to the conference. While there was no cabinet discussion of the proposals, they were the subject of severe criticism by Sir Eyre Crowe, which threw cold water on the entire league scheme.' HR Winkler 'The development of the League of Nations idea in Great Britain, 1914 - 1919' (1948) 20 *The Journal of Modern History* 109. 'Lloyd George as Prime Minister cared nothing about the idea of a League; but Arthur Balfour, who succeeded Grey as Foreign Secretary, was determined to do everything possible to maintain friendship with the United States. Still more important was the fact that Lord Robert Cecil . . . had already made up his mind that the establishment of the League was the most important task any statesman could undertake.' FP Walters *A history of the League of Nations volume 1* (1952) 19. 'To Lord Robert Cecil, then Undersecretary of Foreign Affairs and later a devoted advocate of the League, belongs the distinction of having written the first official memorandum on the subject [of a league].' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 969. 'With Wilson's and Smuts' ardor, he [Cecil] espoused the cause of the League of Nations, and became its leading protagonist in Great Britain.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 273. 'Fortunately, the Committee [to draft the League Covenant] contained one man who could understand and respect the sentiments of European governments and of American senators. If the swift achievement of the February draft had been due above all to the authority of Wilson, the successful issue of the last stages of the work was above all due to the indefatigable efforts of Cecil.' FP Walters *A history of the League of Nations volume 1* (1952) 36. 'Wilson was the inspiration and progenitor of the Covenant but much of its text was British in origin and, without the commitment and negotiating tenacity of Robert Cecil, it would not have emerged, as Wilson himself generously acknowledged.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 64.

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were appointed as the representatives of the British Empire.[944] Smuts initially though that he may have to shoulder the burden on the League Commission alone. On 25 January he wrote:[945]

> Today there is another formal meeting to appoint committees on various subjects. Cecil and myself are to be appointed to the League of Nations, but as he is probably going to Constantinople to meet

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[944] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 507. In addition to Wilson, Colonel House represented the United States on the Commission. The other representatives were: Léon Bourgeois, French Foreign Minister and former Prime Minister who also represented France at both Hague Conferences, and Ferdinand Larnaude, dean of the faculty of law at the University of Paris, for France; Prime Minister Orlando and Vittorio Scialoja, a 'learned lawyer and wise diplomatist' for Italy, and Baron Makino and Viscount Chinda, Foreign Minister and Ambassador in London, respectively, for Japan. FP Walters *A history of the League of Nations volume 1* (1952) 33; FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 33. Lloyd George proposed that, in addition to the two representatives of the Great Powers, two additional representatives should be selected jointly by the Great Powers to represents all the smaller states on the league drafting commission. Wilson was opposed to any small state representation. He advocated that the Great Powers alone should draft the covenant and only then provide smaller states with an opportunity to review it. L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 65. Scholars differ regarding Clemenceau's view on small state representation on the League Commission. Ambrosius states: 'Clemenceau championed the small states' right to full participation. He eventually convinced the British and American leaders to permit small states to select a total of five delegates to serve with the ten representatives of the great powers on the commission.' *Ibid*. Macmillan, on the other hand, notes: 'On January 25, when the Peace Conference created the Commission on the League of Nations, the room resounded with noble sentiments. The mood was somewhat spoiled when representatives of the smaller nations, already restive about their role in Paris, grumbled that the commission was made up only of representatives . . . from the Big Five . . . They too, said the prime minister of Belgium, had suffered. Clemenceau, in the chair, was having none of this. The Five had paid for their seats at the peace Conference with their millions of dead and wounded. The smaller powers were fortunate to have been invited at all. As a concession, they would be allowed to nominate five representatives for the League commission.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 85. Regardless of Clemenceau's position, there is, however, no dispute that on 25 January the smaller powers gained five representatives on the League Commission: Paul Hymans, the Foreign Minister of Belgium, Epitacio Pessôa of Brazil, VK Wellington Koo, the Chinese Ambassador to Washington, DC, Jayme Batalha Reis, the Portugese Minister to Russia, and Vesnić, the Serbian Minister to Paris. At the Commission's first meeting on 4 February 1919, a 'sharp dispute sprang up, the first of many characterising both the Committee and the conference as a whole, between the great Power representatives and those of the smaller states.' FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 39. Paul Hymans of Belgium led the charge for the small states and demanded even greater representation on the Commission. *Ibid*; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 55. Wilson and Cecil objected to the small states' demand for more representation. Wilson did not want them to enjoy equality with the Great Powers, and he feared the larger the Commission, the slower its work would get done. L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 72. However, the small states forced a vote and, over the objections of Wilson and Cecil, four more states took their place around the table in Colonel House's room in the Hôtel Crillon, where the Commission held its meetings. These new members were: Czechoslovakia, Greece, Poland, and Rumania. The new members brought the Commission's number to 19 members, and that remained its size for the remainder. Walters is of the opinion that: '[T]his [the inclusion of the small states on the Commission] . . . proved to be [a] rare exception[ ] to the dominance established by the Anglo-Americans in the commission, and probably eased the passage of a document to which the smaller powers had contributed relatively little, but for which they now shared responsibility.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 55.

[945] Smuts to MC Gillett 25 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 55.

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> the Russian delegates, I may be left alone with this most difficult and responsible task on behalf of the Empire.[946]

With regard to their appointment to the League Commission, Cecil stated that Lloyd George, 'having entrusted General Smuts and me with the League negotiations . . . left the details very much in our hands.'[947]

Although generally true, there occurred, on 31 January, a significant exception to Cecil's statement, when Lloyd George met with his two Empire representatives on the League Commission. It should be recalled that Cecil and Smuts opened negotiations with Wilson on 19 January, and soon the British and American delegations were earnestly working, in a series of informal meetings, on a joint draft to serve as a basis for the forthcoming negotiations of the League Commission.[948]

Cecil and Smuts attempted to keep Lloyd George appraised of the negotiations, but, as stated above, Cecil found that the Prime Minister 'did not want to talk about the League of Nations at all, in which he takes no real interest.'[949] Cecil submitted a joint Anglo-American draft to Lloyd George on 29 January, and requested authority to continue negotiations with the Entente powers on the basis of this draft.[950]

Sir William Wiseman, an effective intermediary between American and British representatives,[951] who had been following the Anglo-American negotiations closely, was concerned that Cecil's views on the league went 'a good deal further than the Prime

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[946] Cecil did not, in fact, go to Constantinople. He assumed his place with Smuts on the League Commission.

[947] Cecil as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980. MacMillan observes: 'Lloyd George, as he had done throughout his political career, chose men he trusted - in this case Smuts and Cecil - gave them full authority, and generally left them to it.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 91.

[948] And, because Wilson's second Paris draft was, in Cecil's view, 'almost entirely Smuts and Phillimore combined, with practically no new ideas in it,' and because Cecil's and Wilson's approaches to the philosophical foundations of international organisation were analogous, 'British and American negotiators had little difficulty in reaching agreement.' GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 438.

[949] Cecil as quoted in *Ibid*.

[950] *Ibid*.

[951] Wiseman was a close friend of Colonel House and a confidante of Lord Balfour.

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Minister,' and held dire consequences for future British diplomatic strategy.[952] He arranged a meeting between the Prime Minister, Smuts, and Cecil on 31 January, prior to a meeting that had been scheduled later that same day between Smuts, Cecil, House, and Wilson.[953]

What transpired at this meeting between Lloyd George, Smuts, and Cecil was 'altogether remarkable.'[954] With a memorandum in hand prepared by his private secretary, Philip Kerr, Lloyd George launched an attack on the very foundations of the approach followed by Smuts and Cecil with regard to the creation of the league.[955] He delineated an alternative scheme with an altogether different approach - an approach much more akin to the views of Hankey, Kerr, and the other conservative members of the Imperial War Cabinet.[956]

Lloyd George argued vigorously for a more functional league, based upon a permanent system of Great power consultation, with smaller state participation only when their interests were affected.[957] 'The prime minister then singled out for attack,' relays George Egerton, 'the keystone provisions of all Wilsonian-type designs for a league - the obligation to participate in collective resistance to aggression.'[958]

Lloyd George curtly asserted that, 'including in the constitution of the League of Nations obligations to go to war in certain stated conditions,' would infringe on the

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[952] Wiseman as quoted in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 438.

[953] *Ibid*.

[954] *Ibid*.

[955] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 438.

[956] See Chapter 3 (3.2) above.

[957] Lloyd George proposed that the league should be modelled upon the practice and procedures that had grown to serve the Supreme War Council. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 438.

[958] *Ibid* 439.

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sovereignty of members to such an extent that it would be 'impossible for any nation to join the league.'[959]

In an extraordinary display of independence, Cecil and Smuts - who were due in only a few hours to meet with the American delegation to reach agreement on a final Anglo-American draft - paid no heed to Prime Minister's recommendations.[960]

Cecil ascribed Lloyd George's attitude to ignorance; he believed the Prime Minister had no knowledge of the papers that Cecil had submitted on the Anglo-American progress towards a joint draft, and that Lloyd George had only read Kerr's memorandum.[961] Cecil dismissed the prime minister's proposed scheme as 'a thoroughly bad one - indeed only a device for postponing the League till after the peace.'[962]

When they met with Wilson later that evening, Smuts and Cecil did not even mention Lloyd George's qualms about the direction the League negotiations were taking.[963] They were fully cognisant of the fact that to change tack at this late stage would be to set off an 'explosive confrontation' with Wilson.[964] Thus, Cecil and Smuts, later on 31 January, did indeed reach agreement with Wilson on the Anglo-American draft, which then served as the basis for deliberations of the League Commission.[965]

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[959] *Ibid*; See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53. The scheme for a league of nations presented by Lloyd George to Smuts and Cecil on 31 January is reprinted in full in GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 440 - 441.

[960] *Ibid* 441; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53. According to Mazower: 'In Paris . . . personal diplomacy took on a life of its own. The Cecil-Smuts team basically ignored the instructions they had been given by the cabinet, and used the support of Woodrow Wilson to trump the objections of their own prime minister.' M Mazower *Governing the world: The history of an idea* (2012) 135.

[961] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 441; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53.

[962] *Ibid* 441.

[963] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53. Smuts also did not breathe a word about the Prime Minister's misgivings in his private letter to Alice Clark on 31 January. He simply stated: 'The Americans and ourselves are in the main agreed on the lines the League should take . . . Tonight we are again holding a meeting with the Americans.' Smuts to A Clark 31 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 58.

[964] GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 441.

[965] *Ibid* 442.

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Egerton characterises the remarkable events of 31 January, during which Smuts and Cecil eschewed the instructions of both their Prime Minister and the Imperial War Cabinet, as follows: 'This marked the point of no return for the British government concerning policy on the nature of the league of nations.'[966]

The Commission on the League of Nations worked with 'exemplary speed and efficiency' that was 'unique at [that] stage of the Paris negotiations.'[967] Meeting ten times in 11 days between 3 and 13 February, it presented a comprehensive draft Covenant to the Plenary Session of the Conference on 14 February.

Wilson, described as an 'admirable chairman'[968] who was 'at his best during these proceedings,'[969] worked hand-in-glove with Cecil, the Commission's deputy Chairman, Smuts, and Colonel House.[970]

With regard to his work on the Commission, Smuts said: 'I have kept well in the background so that the others might have the credit for the League[971] as in that way their

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[966] *Ibid*.

[967] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 53; FP Walters *A history of the League of Nations volume 1* (1952) 33. Walters continues: 'Its debates were business-like, informal and friendly. The keenness of its members was shown by the fact that, during the first and most intensive stage of its work, when it was sitting each evening until midnight, none of them missed a single meeting until on the last day of all Wilson himself was detained by a particularly important discussion in the [Council of Ten].' FP Walters *A history of the League of Nations volume 1* (1952) 33. Sharp comments with regard to the Commission proceedings: 'Hunter Miller's informal notes show that the meetings, around the large red-covered table in Room 351 of the Hôtel Crillon, were often frank and direct.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 56. MacMillan sets the scene of the Commission's deliberations: 'The commission's nineteen members met almost daily, in House's rooms at the Crillon, seated around a large table covered in red cloth. Behind them sat their interpreters murmuring quietly in their ears. The British and the Americans were beside each other, consulting each other continually. The French were separated from them by the Italians. The Portuguese and the Belgians were inexhaustible; the Japanese rarely uttered. Wilson, in the chair, was brisk, discouraging speeches and discussions of details and pushing the League in the direction he wanted.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 91.

[968] 'Wilson was an admirable chairman, possessing that rare form of authority which keeps the proceedings moving at a steady pace without leaving in the mind of any member the impression that he has not been given the opportunity to explain his views.' FP Walters *A history of the League of Nations volume 1* (1952) 33.

[969] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 56.

[970] *Ibid*.

[971] Hancock asserts that with 'others' Smuts meant 'President Wilson.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 507.

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co-operation could best be secured.'[972] However, according to Colonel Stephen Bonsal, Wilson's private translator, Smuts played a subtle, yet potent, role. Before the full Commission Smuts spoke 'almost as rarely as House,' cognisant of not encroaching on Wilson's limelight.[973] 'His best work was done,' said Bonsal, 'in the committees and in missionary work with recalcitrant delegates when he could play . . . a lone hand, an activity in which he . . . excelled.'[974]

Smuts continued to 'exert an commanding influence over the development of the League . . .'[975] On the rare occasion that Smuts did address the Commission in open session, his pronouncements were 'wonderfully persuasive,' and 'thoroughly in accord with Wilson's long-range view.'[976] It could hardly be a coincidence that Smuts can be seen standing next to Wilson in the photograph of the members of the League Commission.[977]

The independence with which Smuts and Cecil pursued the league ideal is exemplified, not only by the fact that they disregarded Lloyd George's express directives, but also that they worked, at times, at cross-purposes with each other. As but one example, Cecil, from the outset, favoured a league council consisting of the Great Powers only, and Cecil's preference was duly embodied in the joint Anglo-American draft that served as the basis of the Commission's discussions.[978]

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[972] Smuts to A Clark 16 February 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 71.

[973] Bonsal as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 982. Kraus notes that, in the Commission sessions, the Japanese delegates were 'almost entirely silent.' But Smuts 'out-silenced' even Baron Makino and Viscount Chinda. R Kraus *Old master: The life of Jan Christian Smuts* (1944) 273.

[974] Bonsal as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 982.

[975] Bonsal as quoted in IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 102.

[976] Bonsal as quoted in *Ibid*. Smith also notes that, when Smuts spoke before the the full Commission, 'it was seldom, if ever, at cross purposes with the intentions of Wilson, and usually it was to support a measure to which Wilson was encountering serious opposition.' IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 102.

[977] This photograph hangs in the reading room of the League of Nations Archives, Palais de Nations, Geneva, and is also reprinted in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 9. In a letter to Alice Clark on 12 February, Smuts enclosed a clipping of this photograph from the *Paris Mail*. Smuts to A Clark 12 February 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 68.

[978] JC Smuts *The League of Nations: A practical suggestion* (1918) 37 - 38.

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On 4 February, the representatives of the small powers on the Commission made vociferous objection to the Anglo-American proposal of 'an exclusively great Power Council.'[979] Paul Hymans, the Belgian Foreign Minister, 'raised the spectre of a new Holy Alliance.'[980] Wilson, who had followed the recommendation of Smuts in *A practical suggestion*[981] and advocated for small power representation on the council in his own drafts of a league plan, supported the small powers on the Commission.[982] Significantly, on this issue, Smuts sided openly with Wilson against Cecil, his fellow Empire delegate.[983]

Smuts appeared well-pleased with the final draft of the Covenant:[984]

> So the draft of the League has seen the daylight. It is almost entirely my original conception and I am naturally pleased at the acceptance of my ideas.

On 14 February 1919, with his hand resting on the Bible, Wilson presented the draft Covenant of the League of Nations to the Plenary Conference: 'A living thing is born . . . it is practical and yet it is to purify, to rectify, to elevate.'[985]

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[979] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 56.

[980] *Ibid*.

[981] Smuts proposed in *A practical suggestion* that the five permanent members of the council should be supplemented by four members in rotation from two panels, the one panel comprising the 'powerful intermediate powers below the rank of Great Powers,' and the other the 'minor states.' JC Smuts *The League of Nations: A practical suggestion* (1918) 37 - 38.

[982] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 102.

[983] With regard to the resolution of this issue, Sharp writes: 'Cecil, with deep misgivings, bowed to this pressure for an elected minority of smaller powers. He fought a rearguard action for several days to restrict the smaller powers to two representatives but it was agreed, on 13 February, that there should be four.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 56.

[984] Smuts to A Clark 16 February 1919 in *Ibid* 71.

[985] Wilson as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 983. See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 59; FP Walters *A history of the League of Nations volume 1* (1952) 34; J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 134. As will be recalled, Smuts concluded *A practical suggestion* as follows: 'For there is no doubt that mankind is once more on the move. The very foundations have been shaken and loosened, and things are again fluid. The tents have been struck, and the great caravan of humanity is once more on the march. Vast social and industrial changes are coming . . . A steadying, controlling, regulating influence will be required to give stability to progress . . . These great functions could only be adequately fulfilled by the League of Nations. Responding to such vital needs and coming at such a unique opportunity in history, it may well be destined to mark a new era in the Government of Man, and become to the peoples the guarantee of Peace . . . and to all the embodiment and living expression of the moral and spiritual unity of the human race.' JC Smuts *The League of Nations: A practical suggestion* (1918) 71.

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Wilson's soaring rhetoric was premature, as the draft Covenant did not occasion universal acclaim. France desired the inclusion of military sanctions; Japan signalled its intention to introduce its controversial provision regarding racial equality; the Dominions of Australia and New Zealand expressed concern about the League's potential encroachment on national sovereignty; and the American Senate would insist on formal recognition in the Covenant of the Monroe Doctrine.[986]

Wilson sailed for the United States on 14 February and returned to Paris one month later. During his absence, those delegations that were not represented on the League Commission had the opportunity to comb through the draft Covenant.[987] When Wilson returned to Paris, 'the stage was set for the further and final acts in the drafting of the Covenant,'[988] and the League Commission sat in a second series of meetings.[989]

Smuts was not actively involved in the League Commission after Wilson's return to Paris. By then he was engaged 'in a bitter struggle against the emerging Peace Treaty.'[990] Therefore, the activities of the League Commission during this time is beyond the scope of this thesis,[991] save to note that, despite numerous amendments, the foundation and

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[986] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 982; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 59; FP Walters *A history of the League of Nations volume 1* (1952) 34; M MacMillan *Paris 1919: Six months that changed the world* (2001) 95; L Ambrosius 'The drafting of the Covenant' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 74 - 77.

[987] 'Governments such as those of Sweden, Norway, Denmark, Holland, and Switzerland were by no means pleased to find themselves excluded from the business of planning the League.' FP Walters *A history of the League of Nations volume 1* (1952) 34. A delegation from the League Commission met with representatives of governments who had remained neutral during the war in a series of informal meetings to garner their views, and a number of their proposals were eventually embodied in the Covenant. FP Walters *A history of the League of Nations volume 1* (1952) 34.

[988] FP Walters *A history of the League of Nations volume 1* (1952) 35.

[989] 'The second series of meetings of the League Committee,' observes Walters, 'was not distinguished by the harmony of the first days. Two months of intensive negotiations on the countless problems of peace-making and of current policy had done much to undermine the unity of the victorious nations.' *Ibid*.

[990] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 104.

[991] Smith notes: '14 February virtually marked the end of Smuts' active assistance with the League Covenant . . . Smuts did not play an active role in these [the second series of] conferences, being absent for some, but he did sit on the committee which decided the contentious problem of a League Capital.' *Ibid*.

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structure of the February draft Covenant remained intact.[992] Scholars ascribe this to the 'skill and determination' of Wilson,[993] and 'negotiating tenacity' of Robert Cecil.[994]

On 28 April 1919, as 'a freak snowfall covered Paris,'[995] a Plenary Session of the Peace Conference approved the Covenant of the League of Nations.

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[992] FP Walters *A history of the League of Nations volume 1* (1952) 36; GW Egerton 'The Lloyd George Government and the creation of the League of Nations' (1974) 79 *The American Historical Review* 442. The indispensable authority on the record of the negotiations of the League Commission and the changes in the wording of the Covenant as they emerged, is David Hunter Miller's *The drafting of the Covenant* (1928).

[993] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 982.

[994] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 64. Cecil' efforts during the last stages of the work were 'indefatigable,' and his focus was 'tightly fixed on the Covenant, and he resented deeply any attempt to use the League as a political pawn . . .' FP Walters *A history of the League of Nations volume 1* (1952) 36; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 60.

[995] M MacMillan *Paris 1919: Six months that changed the world* (2001) 96.

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CHAPTER 5

MANDATES AND REPARATIONS

In this Chapter, this thesis addresses two controversial aspects of Smuts' work at the Paris Peace Conference that exemplify the tension between the idealist and pragmatist facets of his persona, namely (i) the mandate for South West Africa; and (ii) Smuts' 'legal' opinion with regard to the issue of reparations.

1. The mandate for South West Africa: '[I]f the interpretation were to come in practice from General Smuts'

1.1 The confrontation between Wilson and the Dominions

It was common cause among the Entente powers as they gathered in Paris in January of 1919, that the colonies and territories conquered from Germany and the Ottoman Empire should not be returned to those powers.[996] Indeed, when the Council of Ten met on 24 January 1919, the matter hardly merited any discussion and was swiftly dispensed with.[997]

However, the way in which the German colonies in Africa and the Pacific were to be 'liquidated,' in Smuts' phrase, remained a point of considerable contention. 'The loss and gain of imperial territories had been a familiar part of most European settlements in the previous two centuries,' states Alan Sharp.[998] But the Paris Peace Conference 'had set

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[996] PB Potter 'Origin of the system of mandates under the League of Nations' (1922) 16 *The American Political Science Review* 564; DH Miller *The drafting of the Covenant volume 1* (1928) 105.

[997] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 159. Hunter Miller sets forth the record of the meeting of the Council of Ten on 24 January 1919 regarding this matter as follows:

> All he (Mr. Lloyd George) would like to say on behalf of the British Empire as a whole was that he would be very much opposed to the return to Germany of any of these Colonies.
>
> President Wilson said that he thought all were agreed to oppose the restoration of the German Colonies.
>
> M. Orlando, on behalf of Italy, and Baron Makino, on behalf of Japan, agreed.
>
> (There was no dissentient and this principle was adopted.)

DH Miller *The drafting of the Covenant volume 1* (1928) 105.

[998] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 159.

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itself a higher moral standard' than its predecessors, and this would 'complicate the resolution of an already complex situation.'[999]

In the fifth of his Fourteen Points, President Wilson advocated a 'free, open-minded and absolutely impartial adjustment of all colonial claims,' in which 'the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.'[1000] During the voyage to the peace conference, Wilson suggested to his staff that the German colonies might be declared the 'common property of the league to be administered by small nations, with their resources available to all.'[1001]

However, Wilson's Magnolia draft[1002] of a league scheme contained nothing whatsoever regarding the treatment of the former German and Ottoman colonial territories.[1003] It was only after studying Smuts' *A practical suggestion*, that Wilson

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[999] *Ibid*. Sharp explains that the task faced by the statesmen in Paris with regard to the fate of conquered territories was much greater than at any previous peace conference: 'The statesmen in Paris faced problems beyond the confines of Europe . . . [t]he liquidation of the German Empire in Africa and Asia, with over 1,000,000 square miles and approximately 14,000,000 people and the collapse of Ottoman power in the Balkans, Asia Minor and the Middle East . . .' *Ibid*.

[1000] As quoted in DH Miller *The drafting of the Covenant volume 1* (1928) 101.

[1001] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 974; EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 534. Certain members of the United States delegation to Paris, notably George Louis Beer, 'had long advocated the establishment of international supervisory machinery, at least for Africa.' *Ibid*.

[1002] As stated in Chapter 3(3.3) above, this was the plan that Wilson had drawn up for the league prior to his departure for Europe.

[1003] PB Potter 'Origin of the system of mandates under the League of Nations' (1922) 16 *The American Political Science Review* 566.

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incorporated the concept of mandates[1004] 'at some length' in his first and second Paris drafts (supplementary agreements I - IV) of a scheme for the league.[1005]

Regarding the influence of Smuts' pamphlet on Wilson in regards to mandates, Robert Lansing, the United States Secretary of State, wrote:[1006]

> This clever and attractive phrase ['heir of the Empires'] caught the fancy of the President as was evident from his frequent repetition and approval of it in discussing mandates under the League. Just as Smuts had adopted the President's 'self-determination,' so Mr. Wilson seized upon the Smuts idea with avidity and incorporated it in his plans. It unquestionably had a decided influence upon his conception of the right way to dispose of the colonial possessions of Germany and the proper relation of the newly created European states to the League of Nations.

The language of the Wilson articles relating to mandates 'was very largely the language of Smuts,' confirms David Hunter Miller.[1007] But Wilson had made a substantive change of moment to the mandatory idea proposed by Smuts. Wilson added to his scheme for mandatory control by the League, 'the colonies formerly under the dominion of the German

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[1004] It is not the purpose of this thesis to trace the origin of the idea of mandates, or of the term itself, save to quote Hunter Miller: 'So far as the idea involved the principle that the control of uncivilized peoples ought to mean a trusteeship or wardship under which the interests of the natives themselves should be paramount, it had long been advocated by various writers . . .' DH Miller *The drafting of the Covenant volume 1* (1928) 101. For a detailed exposition of the establishment of the institution of mandates, see Q Wright *Mandates under the League of Nations* (1930) 24 - 63. William Rappard, the first Director of the Mandates Section of the League Secretariat, declared: 'The mandatory system formed a kind of compromise between the proposition advances by the advocates of annexation and the proposition put forward by those who wished to entrust the colonial territories to international administration.' Rappard as quoted in *Ibid* 24.

[1005] DH Miller *The drafting of the Covenant volume 1* (1928) 101. For detailed treatment of the content of Wilson's first and second Paris drafts as they relate to the mandates idea, see PB Potter 'Origin of the system of mandates under the League of Nations' (1922) 16 *The American Political Science Review* 567 - 569; EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 534. Crafford notes that the word 'mandatory,' had a special appeal for Wilson, 'who, like Smuts, delighted in and realized the value of significant and apposite phrasing.' FS Crafford *Jan Smuts: A biography* (1946) 166. '[I]t had just the ethical flavour which he [Wilson] was looking for.' KF Nowak as quoted in *Ibid*. 'The very word "mandate,"' remarks Margaret MacMillan, 'had a benevolent and pleasing sound.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 99.

[1006] Lansing as quoted in FS Crafford *Jan Smuts: A biography* (1946) 166.

[1007] DH Miller *The drafting of the Covenant volume 1* (1928) 101. Wright states that Smuts' mandate proposal 'was in large measure taken over by President Wilson in his second draft covenant of January 10, 1919.' Q Wright *Mandates under the League of Nations* (1930) 23. Crafford observes that Colonel House put it even more definitively: '[I]t is a well-known fact that the language of the mandates section in Wilson's revised Covenant "was taken almost verbatim from Smuts."' As quoted in FS Crafford *Jan Smuts: A biography* (1946) 166. Crafford himself states: 'From Smuts's scheme for a league of nations President Wilson adopted a great deal of material. This included the whole of the comprehensive subsection dealing with the mandatory project.' *Ibid*.

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Empire.'[1008] Wilson's new world order simply could not countenance annexation or colonisation.[1009] Unless responsibility for colonial mandates was vested in the League, the mandate system would merely serve to enable the Allied and Associated Powers 'to divide up the spoils.'[1010]

Smuts had gone on record as early as May of 1917 demanding outright annexation of these colonies. Specifically, Smuts argued, the retention of German South West Africa was essential for the security of the Union of South Africa, and the retention of German East Africa essential for the security of the Empire's communications.[1011]

At the first meeting of the Imperial War Cabinet after the armistice, Smuts had again 'firmly staked' South Africa's claim to German South West Africa, as well as his preference that Great Britain should outright annex German East Africa.[1012] Lloyd George recalled Smuts claiming that this view was 'very strongly felt in the Union'[1013] It was Union soldiers, after all, who had done all the fighting in the South West African theatre of war, and most of the fighting in East Africa.[1014]

It should be noted that, in *A practical suggestion*, both with regard to the mandate system in general, and the disposition of the former German colonies in particular, Smuts'

[1008] DH Miller *The drafting of the Covenant volume 1* (1928) 101 - 102. Wilson also omitted mention of Russia. *Ibid* 101. As set forth in Chapter 3 (2.1) above, when Smuts propagated the mandate system in his pamphlet, he had in mind the 'fledgling states hatched from' the former Ottoman, Russian, and Austro-Hungarian Empires, 'which the League should nurse to economic and political adulthood.' Smuts specifically excluded from his mandate scheme the German colonies in Africa and the Pacific. These colonies were 'inhabited by barbarians who not only [could not] possibly govern themselves, but to whom it would be impractical to apply any ideas of political self-determination in the European sense.' JC Smuts *The League of Nations: A practical suggestion* (1918) 15.

[1009] M MacMillan *Paris 1919: Six months that changed the world* (2001) 98.

[1010] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 60.

[1011] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 543; EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 532. Massey, the Prime Minister of New Zealand, and Hughes, the Prime Minister of Australia, similarly claimed direct annexation of German Samoa and New Guinea, respectively, by their countries. *Ibid*.

[1012] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 60.

[1013] Lloyd George as quoted in *Ibid*.

[1014] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 60. Quincy Wright states: 'South African troops under General Botha had occupied German Southwest Africa and South African public opinion vigorously demanded annexation. British forces under General Smuts had occupied East Africa with the exception of a small region on the Congo border held by Belgians.' Q Wright *Mandates under the League of Nations* (1930) 27.

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idealism was tempered by expediency. Admired by some as 'pragmatism,' and condemned by others as 'hypocrisy,'[1015] the mandatory scheme that Smuts proposed, appeared to be a compromise between certain pre-armistice pledges by the Entente leaders with regard to non-annexation of enemy territory,[1016] and the demands of the annexationists in conservative circles in Britain[1017] and the Dominions - pressed by none

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[1015] Lord Balfour, the Foreign Secretary, astutely remarked that the 'line of argument pursued by General Smuts was perhaps playing a little fast-and-loose with the notion of mandatory occupation.' As quoted in EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 532.

[1016] As Wright explains: 'Annexation, though demanded by several of the Allies, was barred by specific pledges. The principle of no annexations and self-determination of peoples, proclaimed by the Russian Revolution, had been emphasized by President Wilson, and the Allies were committed to it by the pre-Armistice agreement which formally accepted with specified modifications President Wilson's fourteen points and other speeches as the basis for peace. The President's . . . fifth point referring to colonies declared that "the interest of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined." Lloyd George had gone even further in declaring "the general principle of national self-determination is as applicable in their cases [the German colonies] as in those of occupied European territories." President Wilson at the Conference was prepared to insist on fulfilments [sic] of these pledges.' Q Wright *Mandates under the League of Nations* (1930) 24 - 25. In Great Britain, civil society, too, especially the *Round Table* group and the Fabians, fought intensely for a new type of colonial policy. Annexations were decried as 'inconsistent with war aims and future peace held to be dependent upon the absence of colonial rivalry.' EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 523. Hunter Miller reports that there was a strong feeling in some quarters in Great Britain against the extension of British colonial rule. '"The British Empire is big enough" is the way that this sentiment was reflected among [some of the] British representatives at Paris.' DH Miller *The drafting of the Covenant volume 1* (1928) 105. In an influential article, Lionel Curtis wrote: 'In tropical Africa, as in the Pacific, the only hope of those races who cannot as yet govern themselves of ever learning to do so is in tutelage by some great democratic civilized nation. Once for all, the League of Nations will render obsolete the old pernicious idea of empire, rightly abhorrent to the American tradition.' As quoted in M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 45.

[1017] Wright comments: 'Forgetting their commitments during the war some of the Allies made a vigorous drive for outright annexation of certain territories. In this the British dominions with Hughes of Australia and Massey of New Zealand as their leading protagonists took a prominent part.' Q Wright *Mandates under the League of Nations* (1930) 35. The British dominions were supported by a 'powerful imperial lobby in London which hoped to consolidate the empire into an international organisation with more cohesion and practical value than Wilson's idealistic League.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 160.

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other than Smuts himself - for the retention of all areas which had been conquered 'with so much outlay of British blood and treasure.'[1018]

Lord Balfour, the Foreign Secretary, astutely remarked that the 'line of argument pursued by General Smuts was perhaps playing a little fast-and-loose with the notion of mandatory occupation.'[1019] With regard to the annexation of South West Africa by the Union of South Africa, it was well-known that Smuts and Botha feared political ruin if they returned from Paris empty-handed.[1020]

The Dominions of Australia, New Zealand, and South Africa tied the issue of annexation to their demand for equality in status at the upcoming peace conference.[1021] This made it well-nigh impossible for the War Cabinet to decide against them, lest a perilous inter-Commonwealth confrontation ensue.[1022]

By the same token, Great Britain ardently desired to avoid the accusation that it had fought the war in the 'British eighteenth-century tradition of imperial expansion.'[1023] Of

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[1018] FS Crafford *Jan Smuts: A biography* (1946) 165; EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 524. Alan Sharp argues that the mandatory system was a way for Great Britain to achieve its major objectives within a framework that would appear Wilsonian. Indeed, the British argued, 'Wilson was merely institutionalising the current good practices of the British empire. For these insights they had to thank the astute and flexible minds of Lloyd George and Smuts, the man who conceived the mandate system, though not originally in the context of the German colonies.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 160. FS Crafford posits that had Smuts realised at the beginning what the ultimate implications of his system of mandates would be, it is questionable whether Smuts 'would have lent himself with any enthusiasm to the policy of mandates as its was finally developed. The tremendous breadth of his vision at the conference as evidence by his prognostications and their eventual fulfilment; his constant pleas for magnanimous treatment of the Central Powers; his unceasing attacks upon the Treaty as it was being formulated; his letters of protest to Mr. Lloyd George and various other Allied leaders against the dismemberment of the enemy nations; his general behaviour at the conference - all these are wholly incompatible with the final elaboration of the mandates system.' FS Crafford *Jan Smuts: A biography* (1946) 165 - 166.

[1019] Balfour as quoted in EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 532.

[1020] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980. As stated, the Nationalist press in South Africa warned Botha and Smuts not to 'show themselves before the public of South Africa without German South-West Africa in their pocket as a new portion of the Union . . .' As quoted in SG Millin *General Smuts volume 2* (1936) 247; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 59.

[1021] EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 532.

[1022] David Hunter Miller observes that London was eager to keep peace in the 'Commonwealth family,' but otherwise 'cared very little about annexations as distinguished from Mandates, either in Africa or the Pacific. . . .' DH Miller *The drafting of the Covenant volume 1* (1928) 104.

[1023] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161.

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equal importance, the 'British pro-Americanists'- like Smuts - were keenly aware of the importance of cooperation with the United States.[1024] The British government thus found itself under extreme pressure and unable to issue definitive instructions regarding colonial territories to its delegation going to Paris in January of 1919.[1025]

Thus, Wilson's conception of international control over the former German colonies in Africa and the Pacific, was decidedly out of sympathy with the ambitions of the British Dominions.[1026] The stage was set for a 'battle-royal' over the fate of the German

[1024] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 160. Mark Mazower states that the British liberal internationalists was conscious of the fact that 'American anti-imperialism . . . represented an unmistakable threat to Anglo-American understanding.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 44.

[1025] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 160; EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 524.

[1026] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 974. FS Crafford characterises the dispute as follows: '[M]uch to the chagrin of some of the Empire's leading statesmen, who had intended the mandate system to be "a compromise between the imperialist secret treaties (and secret agreements the governments of the Allied Powers had arranged, in anticipation of victory, for the division of colonial spoils) and liberal anti-imperialist ideas," Wilson included all conquered territory in the mandatory system.' FS Crafford *Jan Smuts: A biography* (1946) 167.

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colonies.[1027] Already on 20 January, the day after the British and Americans opened negotiations on the League Covenant, Smuts foreshadowed the impending confrontation in a letter to Margaret Gillett:[1028]

> He [Wilson] is entirely opposed to our annexing a little German colony here or there, which pains me deeply and will move Billy Hughes to great explosions of righteous wrath.

[1027] Although beyond the scope of this thesis, for the sake of plenitude, the French position on the German colonies should briefly be stated. In January 1919, Simon opposed the idea of international supervision, and he demanded 'annexations, pure and simple.' France wanted 'to continue her work of civilization in tropical Africa' without any restriction. Simon as quoted in EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 525. According to MacMillan, Clemenceau declared privately to Poincaré: 'The League of Nations guaranteeing the peace, so be it, but the League of Nations proprietor of colonies, no!' Clemenceau as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 100. See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162. MacMillan explains France's true motivation: 'Colonies were a mark of power; they also held what France badly needed: manpower. There were always going to be more Germans than French, but with colonies in Asia and Africa the French had some hope of restoring the balance with what they like to call "our distant brothers" . . . When the issue came up in the Supreme Council, Clemenceau and Pinchon launched an attack . . . It was very well for the United States and Britain to take a detached view, protected as they were from Germany by geography, but France would not have survived the German attack without its colonial soldiers.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 100. Clemenceau, when prevailed upon by Wilson and Lloyd George, ultimately retreated from this position, after having received assurances that France could raise troops in her mandates for purposes of 'defense.' EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 525. The minutes of the meeting of the Council of Ten regarding this issue reads in part:

> M. Clemenceau said that if he could raise troops, that was all he wanted.
>
> Mr. Lloyd George replied that he had exactly the same power as previously. It [the clause in the draft resolution prohibiting military training of natives] only prevented any country drilling the natives and raising great armies.
>
> M.Clemenceau said that he did not want to do that. All that he wished was that the matter should be made quite plain, and he did not want anybody to come tell him afterward that he had broken away from the agreement. If this clause meant that he had the right of raising troops in case of general war, he was satisfied.
>
> Mr. Lloyd George said that so long as M. Clemenceau did not train big 'nigger' armies for the purpose of aggression, that was all the clause was intended to guard against.
>
> . . . .
>
> President Wilson said that Mr. Lloyd George's interpretation was consistent with the phraseology.
>
> M. Clemenceau said that he was quite satisfied.

Minutes reprinted in part in Q Wright *Mandates under the League of Nations* (1930) 39. See also DH Miller *The drafting of the Covenant volume 1* (1928) 115. For the complete minutes, see DH Miller *The drafting of the Covenant volume 2* (1928) Document 18.

[1028] Smuts to MC Gillett 20 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 50.

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During the same week that Smuts and Cecil were 'frequent visitors to House's suite in the Hôtel Crillon[1029] to discuss the draft Covenant, Smuts addressed the Council of Ten on 24 January, in favour of his country's outright annexation of German South West Africa.[1030] Lloyd George was in the difficult position of advancing a case he knew would be opposed by the United States. He argued, 'somewhat half-heartedly'' that annexation was administratively efficacious.[1031]

Lloyd George then yielded the floor to the Dominion leaders. Lansing, who was with a 'sternly disapproving'[1032] Wilson, recorded a brief description:[1033]

> [S]at until 5:15 listening to claims of the British Dominions to control of German colonies. Smuts spoke on German West Africa; Hughes of Australia on German Papua and Marshall Islands; and Massey of N. Zealand on Samoa. Hughes is a great bore. Neither he nor Massey seem to grasp the difference between mandatary and condominium. Their claims were based on strategic importance, but not so Smuts.

It is noteworthy that Smuts, supporting his premier, General Louis Botha, prefaced his remarks by candidly admitting that Botha's authority - and implicitly his own - depended on retaining South West Africa.[1034] Smuts expounded upon the difficulties the Union government faced when, during the early stages of the war, the issue of invading South West Africa, among others, had fomented rebellion.[1035] Unless German South West Africa

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[1029] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980.

[1030] See generally A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 61; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980; M MacMillan *Paris 1919: Six months that changed the world* (2001) 101.

[1031] M MacMillan *Paris 1919: Six months that changed the world* (2001) 101.

[1032] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 61.

[1033] Lansing as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980.

[1034] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 61.

[1035] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980.

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was ceded to the Union, the result would be 'the overthrow of General Botha and all his policy'[1036]

Unlike Germany's other African possessions,[1037] this territory, argued Smuts, was without much value. The Atlantic coast was chiefly desert, and the main of the interior was scrub land, good merely for pastoral use.[1038] South West Africa could only properly be developed together with the Union of South Africa, with which it was 'geographically one.'[1039] As a German base from which attacks could be launched against the Union of South Africa, South West Africa would remain a 'dangerous neighbour' to the Union of South Africa, and by extension the British Commonwealth.[1040]

Smuts and Botha also made much of Germany's authoritarian and brutal colonial administration.[1041] The Germans did not take any steps to improve the land, and had all but exterminated the Herero population.[1042] Smuts claimed that South Africans understood the natives and that the South Africans 'had established white civilization in a savage continent and had become a great cultural agency all over South Africa.'[1043]

One gets the distinct impression that Smuts was less than confident in the force of his arguments. On 25 January he wrote privately:[1044]

[1036] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 61.

[1037] The Cameroons, Togoland, and Tanganyika.

[1038] M MacMillan *Paris 1919: Six months that changed the world* (2001) 101; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 980. According to Curry, this was apparently all Smuts could find to differentiate South West Africa from the other German possessions in Africa, which Smuts agreed could be 'mandated.' *Ibid*. MacMillan observes, as an aside, that this was before its rich deposits of minerals were discovered. M MacMillan *Paris 1919: Six months that changed the world* (2001) 101.

[1039] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 61.

[1040] *Ibid*.

[1041] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 543. As Keith Hancock rightly points out: '[B]ut it still remained to be proved that the Union's record would be better.' *Ibid*.

[1042] M MacMillan *Paris 1919: Six months that changed the world* (2001) 101; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 61.

[1043] Smuts as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 101.

[1044] Smuts to MC Gillett 25 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 55 - 56

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> Yesterday we discussed the Dominion claims to the German colonies. I hope I made a good case to South West Africa, but I don't know. My argument was principally that it was a desert, a part of the Kalahari no good to anybody, least of all to so magnificent a body as the League of Nations! It was like the poor sinning girl's plea that her baby was only a very little one! Not that I consider our claim to South West Africa sinful or wrong.

Wilson, although he held both men in high esteem, especially Smuts, remained impervious.[1045] He stated his belief that a South African mandate would be so successful that the inhabitants of South West Africa would in future freely choose to unite with the Union of South Africa.[1046] 'If the process of annexations went on,' Wilson declared to the Council of Ten, 'the League of Nations would be discredited from the beginning.'[1047]

1.2 Smuts' compromise solution

Smuts was as concerned as Lloyd George over the deadlock between Great Britain and the United States over the disposition of the German colonies.[1048] The British Empire delegation was in dire need of a formula that could consolidate the Dominions' hue and cry for direct annexation, and the opposing demand, both from the United States and certain quarters in Great Britain, that the Empire renounce further old-fashioned colonial expansion.[1049]

Smuts set to work, and three days later (on the morning of 29 January), after consulting with Lloyd George, Cecil and Smuts delivered to House, for Wilson's consideration, a draft of Smuts' 'famous compromise proposal.'[1050] Smuts classified territories to be mandated by the League under categories 'A,' 'B,' or 'C,' dependent on 'the

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[1045] M MacMillan *Paris 1919: Six months that changed the world* (2001) 101.

[1046] *Ibid*.

[1047] Wilson as quoted in *Ibid* 102. 'The world expected more of them. They must not go back to the old games, parceling out helpless peoples.' Wilson as paraphrased in *Ibid*. For the full text of Wilson's exposition of his concept of the mandatory system, see Q Wright *Mandates under the League of Nations* (1930) 35.

[1048] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 981. The Canadians, 'acutely aware of a need for good relations with her neighbour,' urged Hughes and Massey to be reasonable. House made it clear to the British delegation that they had to accede to Wilson's demand. M MacMillan *Paris 1919: Six months that changed the world* (2001) 103; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161.

[1049] EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 532.

[1050] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 981. See also IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 101.

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stage of development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.'[1051]

'Certain territories formerly belonging to the Turkish Empire,[1052] which have 'reached a stage of development where their existence as independent nations can be provisionally recognized,' constituted the class 'A' mandates.[1053] In the case of these territories, which were 'within sight of fitness for self-government,' the duty of the mandatory power was to provide advice and assistance.[1054]

The category of class 'B' mandates applied to the 'peoples, especially those of Central Africa.'[1055] The mandatory power would be responsible for the administration of the territory according to prescribed conditions: 'guarantees of freedom of conscience and religion,' 'maintenance of public order and morals,' and the 'prohibition of abuses,' such as the slave trade, traffic in arms and liquor, and militarisation.[1056]

Smuts also proposed a class 'C' mandate, 'conveniently'[1057] applicable to so-called 'backward areas,' such as 'South West Africa and certain South Pacific Islands'[1058] that were occupied by the Dominions.[1059] These territories - 'owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their

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[1051] Article 5 of 'Document 252 - Resolutions in reference to mandatories' reprinted in DH Miller *My diary at the Conference of Paris with documents volume IV* (1929) 303. See also Article 22(3) of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 56.

[1052] Mesopotamia (Iraq), Transjordan (Jordan), Palestine, Syria and Lebanon. See A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 62.

[1053] Article 6 of 'Document 252 - Resolutions in reference to mandatories' reprinted in DH Miller *My diary at the Conference of Paris with documents volume IV* (1929) 303. See also Article 22(4) of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 56.

[1054] FP Walters *A history of the League of Nations volume 1* (1952) 58.

[1055] Tanganyika, the Cameroons, and Togo. See A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 62.

[1056] Article 7 of 'Document 252 - Resolutions in reference to mandatories' reprinted in DH Miller *My diary at the Conference of Paris with documents volume IV* (1929) 303. See also Article 22(5) of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 57.

[1057] M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1058] Article 22(6) of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 57.

[1059] Q Wright *Mandates under the League of Nations* (1930) 37.

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geographical contiguity' to the territory of the mandatory power - would be governed by the mandatory as an 'integral part of its territory.'[1060]

However, formal title to these territories would remain vested in the League, which would 'safeguard the interests of the native population'[1061] and to which the mandatory would have to submit an annual report.

Colonel House declared the Smuts proposal a 'fair compromise.'[1062] When shown to Wilson, he immediately wrote on it: 'I could agree . . . if the interpretation were to come in practice from General Smuts.'[1063]

'The dominion delegates,' noted Winston Churchill sardonically, agreed 'to veil their sovereignty under the name of . . . Mandate; and this Mr. Wilson was willing to accept.'[1064] Even George Curry, generally one of hagiographic commentators on Smuts, admits: 'It

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[1060] Article 8 of 'Document 252 - Resolutions in reference to mandatories' reprinted in DH Miller *My diary at the Conference of Paris with documents volume IV* (1929) 303 - 304. See also Article 22(6) of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 57; M MacMillan *Paris 1919: Six months that changed the world* (2001) 103; Q Wright *Mandates under the League of Nations* (1930) 37; FP Walters *A history of the League of Nations volume 1* (1952) 58; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 62; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 101. Anghie summarises the 'C' mandate as follows: 'Mandatories over the most backward territories, the C mandates, were given especially extensive powers, as such territories were regarded as 'best administered under the laws of the Mandatory as integral portions of its territory,' subject to the safeguards provided by the Mandate System on behalf of the inhabitants.' A Anghie *Imperialism, sovereignty and the making of international law* (2005) 122

[1061] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 981. 'C' mandates were subject to the same safeguards as 'B' mandates. Article 22(6) of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 57; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161.

[1062] Q Wright *Mandates under the League of Nations* (1930) 37.

[1063] Wilson as quoted in G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 981. '. . ., as opposed to Hughes, whom Wilson described as a 'pestiferous varmint.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 62. FS Crafford describes the process leading to Wilson's reluctant acceptance of Smuts' compromise proposal as follows: 'To his imperialist friends the President's decision was a severe blow. Smuts, who had set his heart on annexing South West Africa to the Union, felt it keenly. So also did the majority of of the other Allied statesmen. They pleaded earnestly with the President to change his mind. Smuts played a prominent part in their discussions. At first Wilson was inexorable. He contended that he was bound by the Fourteen Points. But gradually he allowed himself to be persuaded to compromise.' FS Crafford *Jan Smuts: A biography* (1946) 167.

[1064] EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 533.

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was obvious that the Smuts resolution, while respecting the letter of Wilson's mandates proposals, virtually permitted annexation.'[1065]

Smuts' proposed resolution had a 'stormy passage,' first through the Empire delegation, and then through the Council of Ten.[1066] On 29 January 1919, the date of a 'hurried'[1067] Commonwealth meeting on the colonial question, Smuts wrote to Arthur Gillett:[1068]

> I am working very hard. We are passing some very critical points which require sleepless vigilance . . . Now I must go to the Prime Minister over some nasty business.

The 'nasty business' Smuts referred to was most likely the meeting of the British Empire delegation, which was indeed 'heated and violent.'[1069] Lloyd George 'bullied and persuaded' his colleagues from the Dominions to accept the compromise prepared by Smuts.[1070]

Hughes vehemently opposed Smuts' proposed resolution, and continued to fight 'like a weasel . . .' for outright annexation in the Pacific.[1071] Lloyd George replied that he had

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[1065] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 981. So, too, notes Lentin: 'A Class C Mandate was virtually indistinguishable from annexation . . .' (A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 62), as well as FS Crafford: 'It was virtual annexation' (FS Crafford *Jan Smuts: A biography* (1946) 168). Hunter Miller characterises the proposed class 'C' mandates as: '. . . Mandates in their mildest and most milk and water form, the nearest to the annexation which Smuts desired . . .' DH Miller *The drafting of the Covenant volume 1* (1928) 106.

[1066] IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 101.

[1067] EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 533.

[1068] Smuts to AB Gillett Smuts 29 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 56.

[1069] DH Miller *The drafting of the Covenant volume 1* (1928) 105. According the Robert Borden, Prime Minister of Canada, the meeting produced a 'pretty warm scene.' As quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1070] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162; Q Wright *Mandates under the League of Nations* (1930) 37; M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1071] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162; M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

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been 'arguing his case with the United States for three days but that he did not intend to quarrel with the Americans over the Solomon Islands.'[1072]

Hughes finally acquiesced when Smuts 'reassured him quietly that Wilson "ha[d] no tangible idea" on the subject of mandatory control,'[1073] and upon receiving assurances that the Australian Government would retain full control over immigration.[1074] Hughes was apparently satisfied that the 'C' mandate would achieve all of Australia's major objectives, and that it differed 'only from full sovereign control as a 999-year lease differe[d] from fee simple.'[1075]'I look upon the mandatory system as now settled . . .,' Smuts wrote on 29 January, after the meeting of the Empire delegation.[1076]

However, although Wilson's initial reaction to Smuts' proposal was favourable, the winds had again shifted when Lloyd George submitted the draft resolution to a 'stormy session' of the Council of Ten on 30 January.[1077] On that morning, the *Daily Mail* published an article that was 'clearly inspired by Hughes,' who had been 'especially dismissive of Wilson and his League "toy."'[1078] It accused Great Britain of bowing to the United States,

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[1072] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162; M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1073] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 46.

[1074] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162. This was a matter of the utmost significance to the Pacific powers, especially to Australia's 'White Australia policy,' designed to exclude people from Asian extraction. *Ibid*; M MacMillan *Paris 1919: Six months that changed the world* (2001) 48. MacMillan describes 'White Australia' as a policy 'which let white immigrants in and kept the rest out.' *Ibid*.

[1075] Hughes as quoted in A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162. See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1076] Smuts to MC Gillett Smuts 29 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 57.

[1077] EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 534.

[1078] M MacMillan *Paris 1919: Six months that changed the world* (2001) 103; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 161.

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and of sacrificing its interests on the altar of Wilson's impractical ideals.[1079] President Wilson, 'always sensitive to criticism, was furious.'[1080]

He considered the Smuts resolution that had been offered by Lloyd George 'a very gratifying paper . . . It made a long stride towards the composition of their differences.'[1081] However, Wilson then continued to state that he 'did did not think they could have a final decision' until the plans for the League of Nations had been drawn up and agreed upon.'[1082] A 'first-class row' ensued.[1083]

Hughes had already declared earlier that 'the members of the Conference' clearly understood, that his Government had asked him 'to press for direct annexation of the colonies.'[1084] In response to Wilson's comments, Hughes made a further 'reactionary speech.'[1085]

He stated that, when they had discussed the question at the meeting of the British Empire delegation the previous day, they had 'agreed to the proposal of Mr Lloyd George [the Smuts resolution] as a compromise.'[1086] Now, however, 'the basis for that proposal had been disturbed by what President Wilson had said that morning.'[1087]

[1079] *Ibid* 162.

[1080] M MacMillan *Paris 1919: Six months that changed the world* (2001) 103. See also A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162. Hunter Miller, who recorded the proceedings in his diary, recounts Wilson commenting on the article: 'The President . . . said . . . that these publications in the press, referring especially to the *Daily Mail*, could not continue without making the situation impossible and requiring him to make a public statement of his own views in detail.' DH Miller *The drafting of the Covenant volume 1* (1928) 112. With regard to Wilson's sensitivity to criticism, Harold Nicholson notes: 'A side-light on the President's character . . . is furnished by his sensitiveness, to press-criticisms and especially to ridicule . . . Mr. Lloyd George and M. Clemenceau were, in this respect, gloriously pachydermatous. Mr. Wilson retained his school-girl skin.' H Nicolson *Peacemaking 1919: Being reminiscences of the Paris peace conference* (1933) 201.

[1081] *Doc 18 - Minutes of the Meeting of the Council of Ten 30 January 1919* reprinted in DH Miller *The drafting of the Covenant volume 2* (1928) 196, 199.

[1082] *Ibid*.

[1083] M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1084] *Doc 18 - Minutes of the Meeting of the Council of Ten 30 January 1919* reprinted in DH Miller *The drafting of the Covenant volume 2* (1928) 195.

[1085] DH Miller *The drafting of the Covenant volume 1* (1928) 112.

[1086] *Doc 18 - Minutes of the Meeting of the Council of Ten 30 January 1919* reprinted in DH Miller *The drafting of the Covenant volume 2* (1928) 201 - 202.

[1087] *Ibid* 202.

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When the meeting continued in the afternoon, Massey of New Zealand stated that he 'believed in the principle of direct annexation,' because that would enable them 'to proceed much more quickly with the development of the territories.'[1088] Moreover, direct annexation would also allow them to proceed with the 'education of the native races, not only in secular matters, but also in the principles of Christianity,' which Massey believed was necessary for the welfare of all nations.'[1089]

Wilson then rose and 'brusquely'[1090] asked:[1091]

> Am I to understand that New Zealand and Australia have presented an ultimatum to this Conference . . . [a]nd that if they could not get that definitely now, they proposed to do what they could to stop the whole agreement?

Massey replied, 'No,' but Hughes stated that Wilson 'had put it fairly well,' and 'for the present,' the draft resolution 'represented the maximum of their concessions.'[1092]

General Louis Botha, Prime Minister of the Union of South Africa, realising that a dire emergency was at hand, requested to address the Conference.[1093] Botha, who was commonly admired, made a 'very attractive and moving speech' pleading for conciliation, 'his heavy Boer accent [bearing] witness to the merits of [his] plea.'[1094] Botha stated that, despite his country's interest in South West Africa, he had been willing to accept the mandatory system because he believed that:[1095]

[1088] *Ibid* 206.

[1089] *Ibid*.

[1090] M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1091] *Doc 18 - Minutes of the Meeting of the Council of Ten 30 January 1919* reprinted in DH Miller *The drafting of the Covenant volume 2* (1928) 208.

[1092] *Ibid* 208 - 209. Some secondary sources have Hughes answering: 'That's about the size of it, President Wilson. That puts it very well.' See A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 62; M MacMillan *Paris 1919: Six months that changed the world* (2001) 104.

[1093] *Doc 18 - Minutes of the Meeting of the Council of Ten 30 January 1919* reprinted in DH Miller *The drafting of the Covenant volume 2* (1928) 210.

[1094] DH Miller *The drafting of the Covenant volume 1* (1928) 113; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 101. See also Q Wright *Mandates under the League of Nations* (1930) 38; M MacMillan *Paris 1919: Six months that changed the world* (2001) 104.

[1095] Q Wright *Mandates under the League of Nations* (1930) 38.

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> [T]he League of Nations would consist mostly of of the same people who were present there that day, who understood the position and who would not make it impossible for any mandatory to govern the country.

Hunter Miller summarises the remainder of Botha's speech to the Council in his diary as follows:[1096]

> He referred to the war in which he had fought against the British Empire and the difficulties which had followed it. In these difficulties he said he had always tried to be an idealist and to secure his ideals as principle, giving way so far as was necessary to secure them. He begged the meeting to take that attitude now. He said that he was a supporter of the President; that he believed in his ideals and wished to see them carried out and that there would be no difference over matters which while perhaps important could be conceded without offending the ideals of the President. He pleaded that the really great steps forward be taken . . .

Botha's 'dignified intervention' restored calm and assured the adoption of the Smuts resolution,[1097] which became, with minor alterations, Article 22 of the Covenant of the League of Nations. The way was now cleared for the preparation of a joint Anglo-American draft of the Covenant of the League of Nations.[1098]

Smuts wrote to Alice Clark on 31 January:[1099]

> The mandatory idea has won its way through . . . and even the German colonies have been brought into the scheme . . . The Americans and ourselves are in the main agreed on the lines the League should take.

It should be noted that the discussion at the meeting on 30 January was not pertinently on the question of the distribution of the mandates, but, notes Hunter Miller, 'no one can read the discussion of January 30 without observing that, in part, such a distribution had already

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[1096] DH Miller *The drafting of the Covenant volume 1* (1928) 113. See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 103.

[1097] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 162; IC Smith 'JC Smuts' role in the establishment of the League of Nations and the Mandate for SWA' (1973) 5 *South African Historical Journal* 101. Wright notes that: 'The resolution of the Council of Ten with elimination of the first two paragraphs which recited the misgovernment of Germany and Turkey in their colonies and the addition of two paragraphs dealing with the powers of the League Council and the Permanent Mandates Commission was proposed by General Smuts in the commission on the League of Nations as a substitute for the mandates article in the Hurst-Miller draft and accepted on February 8 with a few modifications.' Q Wright *Mandates under the League of Nations* (1930) 41.

[1098] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 981.

[1099] Smuts to A Clark 31 January 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 58.

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received the tacit consent of everyone.'[1100] Lloyd George, Wilson, Clemenceau, and Orlando apparently agreed to the allotment of mandates on 7 May 1919, 'as they left the ceremony at the Trianon to present the draft Treaty to Germany.'[1101] In the main, this allotment adhered to the 'existing occupations and secret treaties' made during the war.[1102]

Interestingly, it would appear that one such secret agreement had been reached between Great Britain and South Africa regarding German South West Africa. According to the journalist, David Friedman, an agreement was drawn up 'in the greatest secrecy' in London during March of 1917, prior to the United States' involvement in the war. It was a 'War Cabinet Agreement,' and the signatories thereto were Smuts and Lloyd George. The gist of the agreement was that South Africa, after its successful campaign against Germany in South West Africa, would be allowed to annex the territory outright in the event of an Allied victory.[1103]

1.3 The mandate system: Veiled annexation or step along the evolutionary path of international organisation and human rights?

Margaret MacMillan asks the fundamental question regarding the mandates system: 'Was it merely a bit of window dressing, as cynics thought, to describe old-fashioned land grabbing, or was it a new departure in international relations?'[1104]

From the perspective of the present (the *ex post facto* view), the mandate system appears to be inextricably linked to the colonial policies predominant among European powers at the time of the Great War. It also seems to exemplify the generally accepted mentality of colonialism, according to which the so-called 'coloured races' were inferior to

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[1100] Indeed the claims of the British Dominions had been presented at length to the Council of Ten on January 24. DH Miller *The drafting of the Covenant volume 1* (1928) 114.

[1101] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 163; M MacMillan *Paris 1919: Six months that changed the world* (2001) 106.

[1102] Q Wright *Mandates under the League of Nations* (1930) 43; M MacMillan *Paris 1919: Six months that changed the world* (2001) 105.

[1103] The *Friedmann Papers*; see note 218 above. Friedmann states that he came across references to this 'secret agreement' and its principal contents while preparing advance news reports on South Africa's presentation to the International Court of Justice in 1966 in the South West Africa case. As part of a private briefing by David de Villiers, SC, the leading member of South Africa's legal team to the International Court of Justice, Friedmann was provided with voluminous documents (which were to form part of South Africa's submissions). It was during his review of these documents, all marked 'secret,' that he discovered the existence of this 'secret agreement' between Great Britain and South Africa.

[1104] M MacMillan *Paris 1919: Six months that changed the world* (2001) 99.

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the European nations, but that they could, with proper tutelage, be guided towards eventual self-government.[1105]

The paternalistic philosophy inherent in the mandate system of the League of Nations is evident, first and foremost, from the primary and substantive obligation of the mandate holder, as set forth in Article 22 of the League Covenant. Pursuant to Article 22, the European powers undertook to govern these territories as a 'sacred trust of Civilization,' and care for the 'well-being and development' of the inhabitants until such time as these 'backward' peoples not yet ready for self-government were 'able to stand on their own feet in the strenuous conditions of the modern world.'[1106]

Secondly, as MacMillan points out, although the fifth of Wilson's Fourteen Points required that the interests of the local population be taken into account in the disposition of colonial claims, 'no one had actually bothered to consult the Africans and the Pacific Islanders.'[1107]

There were of course also those who, at the time, viewed the mandates system as rationalisation of the pre-existing colonial system, designed to make it more acceptable in contemporary eyes (especially in the United States), and to provide a politically expedient

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[1105] Louis argues that the colonial settlement of 1919 in effect defined three classes of mankind (i) the 'A' peoples of the Middle East who, in a relatively short period of time, would be able to 'stand alone;' (ii) the tribal 'B' peoples of tropical Africa, who would require an indefinite number of years or decades of economic and political advancement under European tutelage; and (iii) the 'primitive' 'C' peoples of the Pacific and South West Africa, who likely would remain European subjects at least for a period of centuries, if not forever. WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 201.

[1106] Article 22 of the Covenant of the League of Nations, reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 56.

[1107] M MacMillan *Paris 1919: Six months that changed the world* (2001) 104. According to Lauren, the colonised peoples described the mandates system as 'the crudity of conquest draped in the veil of morality,' 'moral wrapping paper,' and mere 'fig leaves' designed to conceal the nakedness of imperialism.' Ho Chi Minh realised that for the people of Indochina, the decisions of the peacemakers was the beginning of what would be called the 'bright shining lie': that the right of self-determination applied only to white people - 'not to the brown and yellow peoples of Asia or to the blacks in Africa.' As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 101.

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way to pay lip service to the 'civilising mission,' but not in any essential aspect different from that system[1108] Alan Sharp states that:[1109]

> Too often the newly-discovered device of mandates served only to act as a figleaf for the desire of the the great powers, and in the British case, of her own empire, to annex territories formerly owned by the defeated powers.[1110]

It is indubitable that Smuts created 'that ingenious device,' called the 'C' mandate, out of the 'unwelcome necessity' of respecting (or, more accurately, seeming to respect) the demands of President Wilson, while not leaning as far towards international control as Wilson believed preferable.[1111] Mark Mazower is less diplomatic:[1112]

[1108] E Luard 'The origins of the international concerns over human rights' in E Luard (ed) *The international protection of human rights* (1967) 19. Lauren writes that lest 'all this taking and trading appeared to crass, the powers called their new acquisitions 'mandates,' rather than possessions. PG Lauren *Power and prejudice: The politics and diplomacy of racial discrimination* (1988) 98. These arguments, for public consumption, were supplemented by more candid explanations in private, as the peacemakers referred to the indigenous peoples of the colonies as 'primitive peoples,' 'savage tribes,' racially inferior 'niggers,' and too 'backward' for self-government. As quoted in *Ibid* 97. When Wilson questioned Hughes about his blunt and uncompromising demand for all of New Guinea, the Australian Prime Minister replied: 'Do you know, Mr President, that these natives eat one another. *Ibid*.

[1109] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 159. In a similar vein, the mordant Robert Lansing wrote: If the advocates of the system intended to avoid through its operations the appearance of taking enemy territory as the spoils of war, it was a subterfuge which deceived no one.' Lansing as quoted in FS Crafford *Jan Smuts: A biography* (1946) 169.

[1110] Normand and Zaidi write that, under the mandate system, the demands for self-determination had been forestalled and managed within the system of mandates that preserved imperialist privileges, while holding out vague, illusory promises of self-government and autonomy. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 61.

[1111] EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 532, 536. On 18 September 1920, Smuts, then Prime Minister of South Africa, declared to the German inhabitants of South West Africa that: '[I]n effect, the relations between the Southwest protectorate and the Union amount to annexation in all but name.' Smuts (as reported in *The Cape Times* of 18 September 1920) as quoted in Q Wright *Mandates under the League of Nations* (1930) 524. Smuts confirmed this view in a letter to William Rappard, the first Director of the Mandates Section of the League of Nations, on 4 July 1922: 'Do not for a moment think that in my ideas or proposals I depart from the system of mandates which I consider one of the most beneficent advances in international law. We must only recognize the fact that 'C' mandates are in effect not far removed from annexation.' Smuts to WE Rappard 4 July 1922 in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* 138. See also FS Northedge *The League of Nations: Its life and times 1920 - 1946* (1986) 97. Northedge reports that South Africa contended throughout the life of the League of Nations that 'South West Africa was as much part of her domain as Cape Town or Johannesburg.' *Ibid*. Referring to the example of South Africa, Northedge argues more broadly that: 'The mandatory Powers, especially those responsible for C mandates, tended to argue that they were sovereign, or at least that they exercised sovereign powers: otherwise, they claimed, businessmen would not have enough confidence in the political system to invest money in the territories.' *Ibid*.

[1112] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 45. Winston Churchill was also characteristically blunt: '[T]here were to be no annexations, but Mandates were to be granted to the Principal Powers which would give them the necessary excuse for control.' Churchill as quoted in the context of the policy in the Middle East in EB Haas 'The reconciliation of conflicting colonial policy aims: Acceptance of the League of Nations mandate system' (1952) 6 *International Organization* 528.

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> [T]he idea of turning former German and Ottoman possessions into League mandates turned out to be an ingenious way of squaring the circle between the British Dominions' demand to annex former German colonies and the need to pay lip service to Wilsonian idealism.

On the other hand, however, from the *ex ante* perspective, there are commentators who believe that the mandates system heralded a new departure in international relations. Harold Temperley writes:[1113]

> What sharply distinguishes the Mandatory system from all such international arrangements of the past is the unqualified right of intervention possessed by the League of Nations. The mandatories act on its behalf. They have no sovereign powers, but are responsible to the League for the execution of the terms of the mandate.

Antony Angie states:[1114]

> In the Mandate System . . . the issue of sovereignty took a very different character. In the final analysis, the League was subordinate to the will of sovereign states. In the mandates, this relationship was radically altered. Here, international institutions, rather than being the product of sovereign states, were given the task of creating sovereignty out of the backward peoples and territories brought under the mandate regime . . . It was in the operation of the Mandate System . . . that it became possible for international law not merely to enter the interior realm, but also to create the social and political infrastructure necessary to support a functioning sovereign state.

The innovation represented by the mandates system, was that it did express at least nominal international concern for peoples under the jurisdiction of a single member state of the League.[1115]

The heart of the mandates system was accountability. In the inter-war period, the administering authorities submitted annual reports to the Permanent Mandates Commission to prove that they were fulfilling the obligation of holding the mandates, in the

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[1113] As quoted in Q Wright *Mandates under the League of Nations* (1930) 23.

[1114] A Anghie *Imperialism, sovereignty and the making of international law* (2005) 133, 135 - 136.

[1115] E Luard 'The origins of the international concerns over human rights' in E Luard (ed) *The international protection of human rights* (1967) 20.

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words of Article 22 of the Covenant, as 'a sacred trust of Civilization,' i.e., for the welfare of the 'natives' and not for exploitation.[1116]

And, as Paul Kennedy points out, however unevenly the mandate reports turned out in practice,[1117] precedent was being set with regard to accountability to some higher body than the nation-state.[1118]

In evaluating the validity of both the *ex post facto* and the *ex ante* perspectives, it becomes clear that the mandate system proposed by Smuts conformed to his evolutionary vision of the development of international organisations. According to Mazower:[1119]

> [A] simple extension of colonial rule on nineteenth-century lines was simply unacceptable to European and American public opinion; on the other hand, allowing colonial peoples their freedom seemed

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[1116] As quoted in WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 202. Antony Anghie summarises the annual reporting procedure: 'To achieve effective supervision, mandatories were obliged to submit an annual report to the League Council. These were submitted in practice to the Permanent Mandates Commission (PMC), the monitoring organ established to "receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates."' A Anghie *Imperialism, sovereignty and the making of international law* (2005) 122 - 123. See also Article 22(7) and Article 22(9) of the Covenant of the League of Nations, reprinted in reprinted in FP Walters *A history of the League of Nations volume 1* (1952) 56.

[1117] As but one example, South Africa's fulfilment of its reporting requirements in relation to South West Africa was less than exemplary. Firstly, the Union of South Africa was less than conscientious in fulfilling its annual reporting requirements to the League Council. South Africa's reports were wrongly addresses and were quite brief until 1925, and of a 'descriptive and narrative character.' Q Wright *Mandates under the League of Nations* (1930) 161. Secondly, Antony Anghie illustrates that: 'The Mandate System failed to provide any formal mechanism by which the native could communicate meaningfully with, and represent herself before, the PMC [Permanent Mandates Commission]. In basic terms, the native was spoken for by the mandatory power . . . Tragically, however . . . he actions of these peoples, at least on the international level, became largely what they were represented to be by the mandatory powers.' A Anghie *Imperialism, sovereignty and the making of international law* (2005) 175, 176. Anghie continues: 'Smuts argued for some native representation, at least to the extent of consulting the natives as to whether or not they were agreeable to the mandatory chosen. Only the advanced mandates participated in this process. For the rest, Smuts argued, consultation was simply inapplicable, on account of the backwardness of the people concerned.' A Anghie *Imperialism, sovereignty and the making of international law* (2005) 175 - 176. Thirdly, '[t]he ironies are made clear,' asserts Anghie, 'by the . . . Bondelzwarts riots in South-West Africa. Political and procedural factors, such as the Permanent Mandates Commission's practice of giving the mandatory large discretion when the issues involved were those relating to security, 'largely precluded PMC criticism of the measures adopted.' A Anghie *Imperialism, sovereignty and the making of international law* (2005) 176. Indeed, the Commission, as reported by Wright, was of the opinion that: '[T]he [South African] administrator acted wisely after the hostilities with the Bondelzwarts were inevitable 'in taking prompt and effective steps to uphold government authority and to prevent the spread of disaffection,' though because of the absence of native evidence no opinion could be expressed, 'whether these operations were conducted with needless severity.' Q Wright *Mandates under the League of Nations* (1930) 198 (citing the PMC's statement from the Third Session) as quoted in A Anghie *Imperialism, sovereignty and the making of international law* (2005) 176. Quincy Wright is also of the opinion that the Bondelzwart and Druse investigations in South West Africa and Syria, respectively, disclose the 'great difficulty of placing responsibility for specific incidents.' Q Wright *Mandates under the League of Nations* (1930) 192.

[1118] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 11.

[1119] M Mazower *Governing the world: The history of an idea* (2012) 166.

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> equally preposterous. This was where the League's main contribution to the redefinition of Europe's relations with the colonial world--the mandate system--achieved its true significance. It took the old standard-of-civilization idea and recalibrated this for a world committed, eventually, to . . . a society of nations.

In this sense, Smuts served as a bridge between the old and the new worlds. The immediate antecedent of the mandates system was the Berlin Act of 1885, and its principal legacy was the trusteeship system of the United Nations.[1120]

Although Article 22 did not explicitly refer to decolonisation, the overarching concept it embodied may be regarded as the first manifestation of the ultimate goal to abolish the colonial system that was still being pursued by many European states. [1121]Thus, in some instances, the later trusteeship system of the United Nations, and the large-scale decolonisation of the nineteen fifties and sixties, can be seen as the products of the 'natural evolution' of the League's mandate system.

2. Reparations: 'Logic? I don't give a damn for logic . . . I am going to include pensions'

2.1 Introduction

Of all the quandaries besetting the peacemakers at Paris, the most 'tortuous, long drawn-out, divisive and intractable' was the vexed question of reparations, *i.e.*, 'determining

[1120] WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 203.

[1121] N Matz 'Civilization and the mandate system under the League of Nations as origin of trusteeship' (2005) 9 *Max Planck Yearbook of International Law* 55.

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Germany's material due to her conquerors.'[1122] The 'high point of disenchantment . . . the moment of bitterest revelation'[1123] occurred on 1 April 1919, when President Wilson - 'to the dismay'[1124] of the legal representatives on the American delegation - capitulated to Prime Minister Lloyd George's 'uncompromising'[1125] demand for the inclusion of Allied military pensions and separation allowances in the reparation demanded from Germany.[1126] Antony Lentin synopsises the view of John Maynard Keynes, principal

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[1122] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726; SG Millin *General Smuts volume 2* (1936) 213. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 75. Thomas Lamont, the US Treasury representative on the United States delegation, said: 'The subject of reparations caused more trouble, contention, hard feeling, and delay at the Paris Peace Conference than any other point of the Treaty.' Lamont as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 180. 'The question of reparations or "indemnities," as Woodrow Wilson preferred to call them, caused on of the the major controversies of the Conference.' JC Smuts *Jan Christian Smuts: A biography* (1952) 206. Sharp comments as follows on the magnitude of the reparations conundrum: 'Not only was the problem one of the most dramatic elements of the conference in the short term, threatening at one point to drive Wilson to quit Europe and at another to bring down Lloyd George's government, it was also one of the most enduring of the long-term difficulties of Treaty execution. Finally, it was a topic always in the forefront of the assaults on the practicality, morality and effectiveness of the Treaty which began in 1919 with J.M. Keynes' *The Economic Consequences of the Peace* . . .' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 77 - 78. Lentin also points out that: 'For the British Liberal conscience, both during the Conference and long after, reparations were also among the most painful and disillusioning of its outcomes.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726. Margaret MacMillan comments: 'Although historians are increasingly coming to the conclusion that the burden was never as great as Germany and its sympathizers claimed, reparations remain the preeminent symbol of the peace made in Paris. While most of the 440 clauses of the Treaty of Versailles have long been forgotten, the handful dealing with reparations stand, in what is still the received view, as evidence of a vindictive, shortsighted, and poisonous document.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 181.

[1123] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726.

[1124] JM Keynes *The economic consequences of the peace* (1920) 48.

[1125] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726.

[1126] *Ibid* 726. See also generally JM Keynes *The economic consequences of the peace* (1920) 47 - 50.

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British Treasury representative at Paris and deputy to the Chancellor of the Exchequer,[1127] on this decisive event as follows:[1128]

> The dénouement of Keynes' tale . . . the butt of his derision and contempt - all centre on what happened in 'the hot dry room of the President's house' on April Fool's day - the 'bamboozlement' of Woodrow Wilson - 'perhaps the most decisive moment in the disintegration of the President's moral position and the clouding of his mind.'[1129] The episode has become an abiding historical memory, the defining moment when the Conference slid helplessly from the high moral ground of the Fourteen Points to the abysmal depths, the morass of degrading compromises, of the 'Carthaginian

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[1127] In *The economic consequences of the peace*, Keynes writes: '[I]f ever the actions of a single individual matters, the collapse of the President has been one of the decisive moral events of history . . .' JM Keynes *The economic consequences of the peace* (1920) 34. Keynes' influential book became his attempt to explain the President's 'collapse.' As Antony Lentin notes: 'Wilson's "collapse" and "betrayal" were part and parcel of Keynes' account of the Treaty of Versailles as a settlement irremediably blighted by broken promises and hopes betrayed.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726. Margaret MacMillan agrees that Keynes painted the picture of the responsibility for the 'disastrous consequences' of the Treaty of Versailles 'most persuasively and most persistently.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 181. MacMillan continues, with reference to Keynes' argument: 'Responsibility began with the peacemakers of 1919: the vengeful, grasping Clemenceau, the pusillanimous, vacillating, Lloyd George, and the pathetic, broken, Wilson, who allowed himself . . . to be bamboozled . . . The pecemakers appalled Keynes. They fretted about revenge while European civilization tottered on the brink of collapse.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 181, 182. 'The poor President,' wrote Keynes, 'would be playing blind man's bluff in that party [of the Big Four, especially in the company of Lloyd George and Clemenceau] . . . He allowed himself to be drugged by their atmosphere, to discuss on the basis of their plans and of their data, and to be led along their paths.' JM Keynes *The economic consequences of the peace* (1920) 37 - 38, 42. Keynes described the peace conference as the 'scene of a nightmare,' which to him became so insufferable that he felt himself compelled to resign from the Empire delegation in protest. He returned to Britain 'utterly dejected.' The conference, Keynes said, 'had made him morally, spiritually and physically *ill*.' Keynes as paraphrased in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726 - 727. Lentin characterises Keynes' book as a 'vendetta': 'Demoralisation was succeeded by rage of frustrated idealism, and his book became a vendetta . . . His aim, as he frankly acknowledged, rejecting General Smuts's advice to abandon the book, was "to make the Treaty, or much of it, a dead letter."' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 727. See also JM Keynes to Smuts 12 August 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 280. Keynes was, of course, not the only delegate at Paris thoroughly disillusioned by Wilson's 'collapse.' Harold Nicolson writes: '[M]y own loss of idealism coincided with a similar loss of idealism on the part of those (and they were many) who had come to the Conference fired by the same certitudes as myself . . . We came to Paris confident that the new order was about to be established; we left it convinced that the new order had merely fouled the old . . . The collapse of President Wilson at the Paris Peace Conference is one of the tragedies of modern history. To a very large extent that collapse can be attributed to the defects of his own intelligence and character . . . [h]is spiritual arrogance, the hard but narrow texture of his mind . . . a mind narrowing down to the exclusion of all outside light . . . his sensitiveness to press-criticisms . . ' H Nicolson *Peacemaking 1919: Being reminiscences of the Paris peace conference* (1933) 186, 187, 195, 199, 199 - 200, 201.

[1128] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 727 - 728.

[1129] JM Keynes *The economic consequences of the peace* (1920) 48.

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> Peace'[1130] . . . [and that] triggered demoralisation and despair in the British and American delegations and a 'slump in idealism' among liberals worldwide.[1131]

'It was a long theological struggle in which, after the rejection of many different arguments,' writes Keynes in *The economic consequences of the peace*, the President finally capitulated before a masterpiece of the sophist's art.'[1132] What Keynes was referring to was an opinion on the issue of reparations prepared by Smuts, at the behest of Lloyd George, late on Sunday, 30 March, and into the small hours of 31 March 1919.

Although not quite as scornful as Keynes, Smuts' main biographers seem to to be uniformly critical of Smuts' opinion. Keith Hancock asserts that Smuts 'let himself be dragged into the centre of the controversy over reparations,' and that the opinion Smuts prepared on Germany's liability in this regard, 'has done more damage to his reputation than any other document that he ever produced in his whole life.'[1133]

Sarah Gertrude Millin holds that, because of this opinion, Smuts found himself, 'for the rest of his days,' in a 'false position, from which, despite all his work against reparations, he has never been able to escape.'[1134] 'Smuts' share in the reparations discussions and conclusions,' opines FS Crafford, 'was even more unfortunate that the part he played in respect of mandates.'[1135] Antony Lentin notes that Smuts' legal opinion 'became the butt of criticism from which it has never recovered.'[1136]

In this sub-chapter, this thesis examines afresh Smuts' legal opinion on reparations, to determine whether the issue was as perspicuous as Keynes and Smuts' biographers

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[1130] *Ibid* 32.

[1131] Antony Lentin, in an insightful article, 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 725 - 763, reconsiders Keynes' damning verdict and influential account of Wilson's gullibility and culpability, which has remained virtually unquestioned. Lentin re-examines the question of pensions, and specifically Lloyd George's intentions with regard to the pre-armistice agreement, and suggests that the question was less clear-cut than Keynes may have suggested.

[1132] JM Keynes *The economic consequences of the peace* (1920) 49.

[1133] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 515. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 77.

[1134] SG Millin *General Smuts volume 2* (1936) 225.

[1135] FS Crafford Jan Smuts: A biography (1946) 169.

[1136] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 78.

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seem to suggest; whether the condemnation heaped upon Smuts is justified; and whether the ever-present struggle within Smuts between the contradictions in his character[1137] - between his idealism and his pragmatism - played a role in this regard. A brief background to the reparations controversy follows.

2.2 A brief background to the controversy

In his Fourteen Points address to the United States Congress on 8 January 1918, Wilson referred in three of the points to 'restoration' of territories invaded and occupied by Germany.[1138] The American President followed and elucidated this theme in his Four Ends speech of 11 February 1918 when he declared: 'There shall be . . . . no contributions, no punitive indemnities.'[1139] By the autumn of 1918, faced with the reality of inevitable defeat, Germany appealed to Wilson for a cease-fire based upon the 'peace of justice' that Wilson had promised since January in his Fourteen Points and subsequent addresses.[1140]

On 5 November 1918, on behalf of the Allied and Associated Powers, Wilson offered peace on the basis of his prior proposals, subject to two Allied reservations, both

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[1137] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 47.

[1138] The relevant points were VII, VIII, and XI:

VII. Belgium, the whole world would agree, must be evacuated and restored . . .

VIII. All French territory should be freed and the invaded portions restored . . .

XI. Rumania, Serbia, and Montenegro should be evacuate; occupied territories restored . . .

W Wilson 'Fourteen Points Speech (1918)' as reprinted in AS Link *et al* (eds) *The Papers of Woodrow Wilson volume 45* (1984) 536.

[1139] Wilson as quoted in A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 79.

[1140] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733.

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formulated by Lloyd George.[1141] In the second of these reservations,[1142] Lloyd George sought to put a 'gloss'[1143] on the term 'restoration' in Wilson's Fourteen Points:[1144]

> Further, in the conditions of peace laid down in his address to Congress on January 8th, 1918, the President declared that invaded territories must be restored, as well as evacuated and made free. The Allied Governments feel that no doubt ought to be allowed to exist as to what this provision [restoration] implies. By it they understand that compensation will be made by Germany for all damage done to the civilian population of the Allies and to their property by the aggression of Germany by land, by sea, and from the air.[1145]

Once Germany accepted the terms of Wilson's offer - including the Allied reservations - the Pre-Armistice Agreement came into being, and was legally binding on the Entente and Central Powers.[1146] In fact, this was confirmed at Paris, where the Allied delegations expressed their 'complete accord with the German delegation' that the pre-armistice agreement constituted a *pactum de contrahendo*.[1147]

The discord arose over the meaning of the phrase that defined and delineated Germany's liability, to wit, *'all damage done to the civilian population of the Allies and to*

[1141] Ibid 733. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76. Lloyd George warned the War Cabinet on 25 October 1918 that, unless the British Empire voiced objection, 'the Germans would have a perfect right to assume that the Fourteen Points were the worst conditions that could be imposed on them.' Lloyd George as quoted in A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 79.

[1142] As stated above, the first reservation concerned Wilson's second of the Fourteen Points relating to 'freedom of the seas.' 'Lloyd George rejected this out of hand, while conceding his willingness to discuss it at the Peace Conference.' The other reservation was to prove vastly more important.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733.

[1143] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733.

[1144] The second reservation as quoted in Smuts' legal opinion on reparations, reprinted in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 96.

[1145] Millin comments on the second reservation: '[I]n fact, "invaded territories" included uninvaded territories. They [the Allies] had, in other words, substituted for Wilson's condition an entirely new condition.' SG Millin *General Smuts volume 2* (1936) 216. In another significant amendment, the phrase 'Germany's aggression' was substituted for the reference to Germany's 'invasion of Allied territories.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 80.

[1146] The Pre-Armistice Agreement, dated 5 November 1918, is reprinted in full in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 66 - 67.

[1147] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733.

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their property.'[1148] As Keynes churlishly remarked: 'Few sentences in history have given so much work to the sophists and the lawyers.'[1149] Soon 'the lawyers were interpreting the interpretation,' writes Millin.[1150]

The Pre-Armistice Agreement would appear, *prima facie*, to exclude by implication the costs of an indemnity claim, *i.e.*, the full cost of prosecuting the war, which conventionally included payment by states of military pensions to disabled combatants and separation allowances to their dependents.[1151] However, at the commencement of the

[1148] As John Foster Dulles, chief legal advisor to the American delegation, pointed out: 'For better or worse,' the Pre-Armistice Agreement was binding: '[I]t remained only to give it a fair construction.' Dulles as quoted in *Ibid* 741.

[1149] JM Keynes *The economic consequences of the peace* (1920) 105.

[1150] SG Millin *General Smuts volume 2* (1936) 213.

[1151] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 80; A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733.

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peace conference, every delegation, save that of the United States, presented a claim for recoupment of their war costs *in toto*.[1152]

[1152] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 80. Although not strictly within the scope of this thesis, the British and French claims for indemnity briefly require further explanation. In the United Kingdom, the Prime Minister of Australia, William Morris Hughes, was the first politician of note to add his voice to the general hue and cry of the press, and to call publicly for an indemnity. William Hughes, notes Sharp, was an 'irascible and difficult man. [He] was partly deaf, easily irritated, and seldom afflicted by doubt. Many of his Empire colleagues regarded him as "l'enfant terrible" to be avoided when possible and accommodated when necessary.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 81. 'With the idea of indemnity gaining press and public support in the midst of an election campaign, Lloyd George had a difficult problem. He sought to solve, or at least to evade it, by establishing, on 26 November 1918 an Imperial War Cabinet Committee on Indemnity, forcing a reluctant Hughes to become its chairman.' *Ibid* 81 - 82; JC Smuts *Jan Christian Smuts: A biography* (1952) 207. This Committee, 'packed with known hardliners,' was charged with calculating a preliminary estimate for the British government of 'Germany's capacity to pay.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 187. '"Altogether it was the oddest committee I ever served upon," said Sir George Foster. It made almost no attempt to collect evidence but relied on personal impressions and wishful thinking; as Foster put it, "to make the Hun pay to the utmost, whether it leads to a generation of occupancy and direction, or not, and forgetful of the results otherwise."' *Ibid*. The Committee argued that, since the cost of the war 'must fall on the civilian population, who would eventually have to pay for everything, the damage the civilian population suffered was the cost of the war.' SG Millin *General Smuts volume 2* (1936) 214. Sharp summarises the conclusions of the Committee as follows: 'Starting from the premise that the cost of the war would ruin either the Allies or Germany, the committee had decided, in a member's words: "On the whole I think we had better ruin them."' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 82. Although not yet able to assess the whole cost of the war, on 2 December 1918, the Committee declared Britain's direct cost, and the amount the enemy could pay once normal conditions were restored, to be £24 000 million, in annual instalments of £1 200 million, including five percent interest. SG Millin *General Smuts volume 2* (1936) 214; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 82. The Committee offered no empirical evidence for its claim, which was 'wildly in excess' of the Treasury estimates of Germany's capacity to pay of £900 million to £3 000 million. *Ibid* 82. The French Committee on reparations, states Millin, allocated to Germany the 'godlike task' of restoring the world 'to the condition she had been in before she had made the war.' SG Millin *General Smuts volume 2* (1936) 217, 215. JC Smuts concurs: 'The French had worked out even more far-fetched ideas [than the British] on compensation to civilians . . . Germany must be made to pay for her sins and to restore the world to its pristine condition.' JC Smuts *Jan Christian Smuts: A biography* (1952) 207. The French Committee interpreted *'damage to the civilian population'* to mean: 'Allowances, bonuses or pensions to the widows and orphans of soldiers; to maimed or invalided soldiers; to the civilian victims of bombardments, factory explosions and accidents in war factories; to prisoners of war (civilian or military), shot, interned or maltreated by the enemy. It included destruction or deterioration of property through bombardment, occupation by troops, defensive or offensive arrangements, torpedoes, submarines, mines. Objects of such destruction or deterioration were everything in public, business or private life - from forests and canals, through shops and cargoes, to drawings and documents - in short, everything.' SG Millin *General Smuts volume 2* (1936) 214 - 215. The amount that the French Committee was demanding was £44 000 million. MacMillan describes the mood of public opinion in France as follows: '"Who Ought to be Ruined?" asked a headline in the conservative *Le Matin*, "France or Germany?" Surely the aggressor and not the victim should pay for setting the damage right. The Americans might talk of the new diplomacy without indemnities or fines, but the old traditions where the loser customarily paid still ran strong. France had paid up in 1815, when Napoleon was finally defeated, and it had done so again after 1871. Both times Germany had collected; now it was going to pay out.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 191. [*Continued in n 164.*]

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1153

1153 *[Continued from n 1152]*: With regard to the indemnities that France had paid to Germany after the Franco-Prussian war, Millin writes: 'Had not the Germans themselves been sure, after the war of 1870, that the French would not be able to pay the amount demanded of them; and when they did actually pay it, was it not, in later years, Bismarck's one regret that he had not asked for more? . . .' SG Millin *General Smuts volume 2* (1936) 215. Of the French and British claims for indemnities, a journalist commented cynically: 'They play with billions as children play with wooden blocks, but whatever we agree to will largely be a figure of speech, for Germany will never be able to pay such a vast sum. As quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 184. However, as MacMillan points out: 'It is easy with hindsight to say that that the victors should have been less concerned with making Germany pay and should have concentrated more on getting Europe going again. But after a war that had brought destruction on such a scale and shaken European society so deeply, how could political leaders speak about forgetting? In any case, public opinion would simply not allow them to do so. "Make the Hun pay," said the British. "Let Germany Pay First," said the posters covering the walls of Paris.' *Ibid* 185. 'The damage to Belgium and France was colossal: 'Belgium had been picked clean. In the heavily industrialised north of France, the Germans had shipped out what they wanted for their own use and destroyed much of the rest. Even as German forces were retreating in 1918, they found time to blow up France's most important coal mines. As Clemenceau said bitterly: "The barbarians of whom history spoke took all that they found in the territories invaded by them, but destroyed nothing; they settled down to share the common existence. Now, however, the enemy had systematically destroyed everything that came in his way." Judging by captured German documents, it looked as though the Germans intended to cripple French industry and leave a clear field for their own.' *Ibid* 191. '"In my poor country France," said the French minister of the liberated regions, "there are hundreds of villages into which no one has yet been able to return. Please understand: it is a desert, it is desolation, it is death."' *Ibid* 185. However, both Sharp and MacMillan point out that, although the French have historically been cast as the 'villains of the reparations drama,' whose reparations policy had been seen as 'an extension of security policy' (a 'drained and destitute Germany could not threaten France'), the French policy was 'more subtly motivated and flexible than the cartoon caricature of a large Frenchman demanding money with menace from a destitute German child.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 83. See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 192 ('The picture painted vividly by Keynes and others of a vindictive France, intent on grinding Germany down, begins to dissolve'). Trachtenberg demonstrates that reparation was only one strand - and initially not the most important strand - in a more general French economic and financial strategy. M Trachtenberg 'The evidence of Fench moderation' in WR Keylor (ed) *The legacy of the Great War: Peacemaking, 1919* (1998) 138 *et seq*. Louis-Lucien Klotz, the French Minister of Finance, was supposed to have said in answer to any question about the future of France: '*L'Allemagne paiera*' ('Germany will pay'). A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 78 - 79. However, as MacMillan argues, whatever Klotz did, he acted as Clemenceau's subordinate. 'If Klotz stood publicly for high reparations, that kept the French right from attacking Clemenceau for not being tough enough on Germany.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 190. MacMillan continues: 'In private, Clemenceau admitted that France would never get what it hoped for and he sent Louis Loucheur, the French Minister of Industrial Reconstruction, his most trusted economic adviser, to talk to the Americans in confidence about more moderate terms. In their conversations, Loucheur made it clear that he personally saw no long-term advantage for France in driving Germany into bankruptcy . . . Klotz admitted to the Foreign Affairs Commission of the French Chamber of Deputies that war costs would have produced a figure that even novelists in their wildest dreams would not come up with.' *Ibid* 190, 191.

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Lloyd George had dispatched to Paris, in Keynes' words, three 'high reparationers,'[1154] to represent the Empire on the Commission on the Reparation of Damage: John Andrew Hamilton; Lord Sumner of Ibstone, a Lord of Appeal in Ordinary and 'one of the foremost lawyers of his time;' Lord Cunliffe, a former Governor of the Bank of England, and William Morris Hughes, the Prime Minister of Australia.[1155]

From the time the Commission commenced its work on 25 January 1919, Hughes and Sumner doggedly maintained that nothing in the Pre-Armistice Agreement precluded a full indemnity.[1156] After a month spent in argument, the American delegation entreated Wilson, who was then on his way to the United States, for avail.

On 24 February 1919, Wilson cabled a 'vigorous rejoinder' from aboard the *SS George Washington*.[1157] The President stated forcefully, and with the threat of doing so 'publicly, if necessary,' that the Pre-Armistice Agreement irrefragably excluded any claims

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[1154] Keynes to H Temperley 17 May 1932 as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 731. Trachtenberg also describes Hughes, Cunliffe, and Sumner as 'consistent advocates of a heavy indemnity.' M Trachtenberg 'Reparation at the Paris peace conference' (1979) 51 *The Journal of Modern History* 32.

[1155] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 731; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 86; M MacMillan *Paris 1919: Six months that changed the world* (2001) 187 - 188. Keynes nicknamed Sumner and Cunliffe the 'Heavenly Twins,' because of the 'astronomical sums which they concocted - five or six times greater than [Keynes'] own estimate of German capacity - sums to which they clung with flint-like obduracy.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 732. In his letter of resignation from the British Empire delegation at Paris, Keynes exclaimed: 'The battle is lost. I leave the Twins to gloat over the devastation of Europe.' Keynes to Lloyd George 5 June 1919 as quoted in *Ibid*. Of Sumner and Cunliffe Keynes also said: '[T]hey always go about together and are always summoned when some particularly nefarious act has to be committed.' Headlam-Morley as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 187 - 188. With regard to Hughes' stance on reparations, MacMillan observes: '[T]he Australians were for getting the maximum from Germany. Hughes loathed the Germans, whom he, like most of his compatriots, had long seen as the chief threat to Australia, and he thought the American objection to high reparations unprincipled and self-serving. As he told Lloyd George, a neutral United States had made great profits in the early stages of the war, while the British Empire poured out its blood and treasure. Without a huge settlement from Germany, Britain would lose in the coming competition with the United States for world economic supremacy.' *Ibid* 190. Hughes became the 'most vocal exponent of a Carthaginian peace among the British delegation at Paris.' E Goldstein 'Great Britain: the home front' in MF Boemeke, GD Feldman & E Glaser (eds) *The treaty of Versailles: A reassessment after 75 years* (1998) 158.

[1156] FS Crafford *Jan Smuts: A biography* (1946) 169; A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733.

[1157] FS Crafford *Jan Smuts: A biography* (1946) 169 - 170; A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 733 - 734.

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for war costs.[1158] Claims for indemnities were 'clearly inconsistent with what we deliberately led the enemy to expect and cannot now honourably alter simply because we have the power.'[1159]

As Wilson's veto 'appeared to draw a line under the matter,' Lloyd George changed tack. He claimed that *'damage done to civilian populations'* included 'damage suffered by a serviceman's dependents through death or mutilation.'[1160]

Lloyd George's objective was clear enough. The Fourteen Points provided for compensation only with regard to 'wrecked countries but not for ruined exchequers.'[1161] Britain's war costs, including gargantuan debts to the United States - which Wilson unqualifiedly refused to excuse - were far in excess of those of any of the Allies.[1162]

A restrictive definition of the term ‘civilian damages’ would cause the lion's share of reparations to accrue to France and Belgium, which had suffered invasion. These countries’ stupendous claims to be compensated for their devastated war-zones were expressly included within the terms of the Pre-Armistice Agreement, after all. However, the claims of Great Britain, which had not suffered invasion, but on which the financial

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[1158] *Ibid* 734.

[1159] Wilson as quoted in FS Crafford *Jan Smuts: A biography* (1946) 170. See also A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 734. In Wilson's view, based upon his Fourteen Points, Germany would be liable, put plainly, for the devastated battlefields of France and Belgium (*i.e.*, damage caused by the unlawful acts of war), but not for the cost of the Allied governments incurred in prosecuting the war, *e.g.*, munitions or food for soldiers (*i.e.*, war costs themselves). M MacMillan *Paris 1919: Six months that changed the world* (2001) 186. 'When Lloyd George tried to blur the line between reparations and indemnities, Wilson would have none of it: "Bodies of working people all over the world had protested against indemnities . . ."' Wilson as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 186. See also FS Crafford *Jan Smuts: A biography* (1946) 169.

[1160] Lloyd George as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 734

[1161] FS Crafford *Jan Smuts: A biography* (1946) 170.

[1162] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 729.

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brunt of the war had fallen, were in danger of 'being squeezed out' by the French and Belgian claims.[1163]

Lloyd George therefore placed his authority behind those items which would, if admitted, maximise the Empire's share of any reparations: servicemen's disability pensions, separation allowances for their wives and children, and pensions for their widows.[1164] Millin summarises Lloyd George's quandary:[1165]

[1163] *Id* 729; FS Crafford *Jan Smuts: A biography* (1946) 170. Under a narrow definition of 'civilian damages, notes Sharp, 'Great Britain would receive relatively little despite contributing more heavily in financial terms, than France, whilst Australia, which had expended more men and money than Belgium, would receive nothing.' A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 89. MacMillan comments as follows on Lloyd George's claim for including pensions and separation allowances in the definition of 'civilian damages': 'The British were concerned that, if Wilson stuck to his guns, the British empire would end up with compensation largely for ships sunk by the Germans. France would get the lion's share, which, in the British view, it would probably waste with its usual inefficient financial management.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 186. 'As the physical devastation of British territories was slight,' states Curry, 'the Empire's share of a reparations figure based strictly on damages to civilian property would be small. Inclusion of pensions and the like would help offset this.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984. See also K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 105.

[1164] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 729; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76.

[1165] SG Millin *General Smuts volume 2* (1936) 216 (Millin's emphasis). As various commentators point out, Lloyd George was under substantial pressure from the British electorate. In the so-called 'coupon election' of November 1918, Lloyd George had responded to the anti-German mood in Great Britain. There was enthusiasm for the trial of the Kaiser, for the expulsion of Germans from Great Britain, and for demanding an indemnity from Germany. A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 82. In a major speech at Newcastle on 29 November 1918, Lloyd George had called for, among other things, an indemnity from Germany to pay for the cost of the war to the limit of its capacity. *Ibid*. Thereafter the anti-German theme became dominant. Lloyd George's colleagues demanded the 'hanging of the Kaiser,' and promised to 'squeeze the German lemon until the pipes squeaked.' *Ibid* 82 - 83; M MacMillan *Paris 1919: Six months that changed the world* (2001) 189. On 11 December 1918, Lloyd George led the voters of Bristol to believe that the entirety of Britain's war costs could be demanded from Germany. 'We will search their pockets for it,' Lloyd George pledged. *Ibid*; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 83. The last coalition manifesto before the vote simply exclaimed: '1. Punish the Kaiser. 2. Make Germany pay.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 189. Erik Goldstein notes that Smuts had 'besought Lloyd George "not to commit himself," had told him he was bound to win easily and that he need give no pledges. But letters came pouring in from election agents all over the country declaring that people were caring about nothing but punishments and indemnities and Lloyd George gave way.' E Goldstein 'Great Britain: the home front' in MF Boemeke, GD Feldman & E Glaser (eds) *The treaty of Versailles: A reassessment after 75 years* (1998) 154. With regard to Lloyd George's Bristol speech on 11 December, Smuts observed to his Quaker friend, Margaret Gillett: 'I . . . have just given the Prime Minister what I consider a workable scheme on the question of indemnities. Incidentally it involves his swallowing all his statements on the subject of the general election, but after all that is *his* affair. The only thing after a foolish speech is wise action.' Smuts to MC Gillett 29 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 92 - 93 (Smuts' emphasis). The situation for Lloyd George became so desperate that he, unusually, resorted to a robust *realpolitik* argument: Unless pensions and separation allowances were included in the reparations bill, Lloyd George declared to Wilson, 'I might as well go home, as I had no authority to sign unless this were admitted.' Lloyd George as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 729.

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> What the English dreaded was facing their people with the unjust and calamitous result that could only be avoided if reparations included allowances and pensions - were *made* to include them . . . Imagine the position if England that had lost so heavily in men and money, yet so little on land, were to see almost all compensations go to the Continent at England's expense . . . Imagine the delegates returning from the Peace Conference . . . telling the people of Britain that not all their diplomacy had been able to avert such a monstrous result, and that it only remained for them to face the prospect of unrelieved, unendurable taxation for ever. Imagine the outcry!

Wilson's riposte came at once: 'This is a point the German's may dispute, and concerning which the jurists may have a different opinion.'[1166] In the face of Wilson's 'uncompromising reaction,' Lloyd George instructed Lord Sumner, the 'distinguished Law Lord' and principal British delegate on reparations, to prepare a legal opinion for purposes of attempting to persuade the American plenipotentiaries to Lloyd George's view.[1167] Thus began what Keynes dramatically characterised as:[1168]

> [T]he weaving of that web of sophistry and Jesuitical exegesis that was finally to clothe with insincerity the language and substance of the whole Treaty. The word was issued to the witches of all Paris:
>
> Fair is foul and foul is fair,
> Hover through the fog and filthy air
>
> The subtlest sophisters and most hypocritical draftsmen were set to work, and produced many ingenious exercises which might have deceived for more than an hour a cleverer man than the President.

Sumner argued for an expansive definition of the concept of 'civilian:' An Allied conscript wounded in action, and thus entitled to a disability pension, was 'simply a civilian called to

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[1166] Wilson as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 734. Including pensions and separation allowances within the definition of 'civilian damages,' maintains Crafford, meant that 'the enemy could be forced to pay almost any sum to the gratification of all and sundry.' FS Crafford *Jan Smuts: A biography* (1946) 170.

[1167] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 734; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76.

[1168] JM Keynes *The economic consequences of the peace* (1920) 47.

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arms in the cause of justice; his uniform makes no difference.'[1169] Sumner emphatically reformulated the cardinal question:[1170]

> Did the Allies mean by the word ['civilian'] that there should be no claim in the name of the widow or the fatherless, when the dead man was in khaki and a received a soldier's pay, though they were vigilant to stipulate for it in favour of men who wore black coats or earned good wages?

Lest there was any doubt, Sumner concluded his legal opinion by providing the answer:[1171]

> Certainly it appears to me that there is no logic[1172] which could deny war pensions for the wounded and the maimed, to the orphan or the widow of the dead . . .

[1169] Sumner as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 734 - 735. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984.

[1170] Sumner as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 735.

[1171] Sumner as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 735.

[1172] Lentin points out that, unusually for a lawyer, Sumner invoked history and morality rather than law. *Ibid* 734. This is the case presumably because there were no legal precedents upon which Sumner could rely. Sumner asserted that the issue 'transcended the narrow norms of documentary construction appropriate to domestic and international law . . . He stressed the historical circumstances in which the Pre-armistice agreement had been drafted . . . he referred to the "principal of justice" expressly underlying Wilson's Fourteen Points, in order to plead that ". . . . it is in broad and statesmanlike principles such as this rather than in the technical rules adopted in courts of the solution of private disputes, that guidance should be sought in dealing with the vast questions which are here at hand." "The world," he declared, "which is guided more by moral considerations than by legal arguments, will remain cold to purely legal contentions. It will fail to realise how, by using the word 'civilian,' just claims are to be excluded," and "I cannot imagine any case to which history will say that the technical law of evidence was less applicable than to this case, which transcends the limits of al private disputes."' Sumner as quoted and paraphrased in *Ibid*.

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To that of Lord Sumner, the law officers of the Crown, Ernst Pollock (Solicitor-General) and Sir Gordon Hewart (Attorney-General), also added their learned opinion in favour of a capacious interpretation of the term 'civilian populations.'[1173]

Lloyd George's objective in seeking these legal opinions was to 'win over a skeptical Wilson.'[1174] Lloyd George's exertions were, however, to no avail. Wilson 'vehemently rejected'[1175] Sumner's opinion as 'very legalistic' and 'threw [it] out' 'with almost contempt.'[1176]

[1173] Lentin explains that when the Cabinet seeks legal advice in a matter of high politics, it consults the law officers of the Crown. A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 735. The law officers' argument was essentially a variant of that of Sumner and hinged upon the definition of the phrase 'civilian population.' During the war, they argued, 'the activities of the Allied Nations - of men and women alike - were diverted from civilian pursuits and occupations to those of war.' There were 'very few persons who were engaged in civilian duties only, and who were not also engaged . . . in some military pursuits.' Pollock and Hewart as quoted in *Ibid*. They concluded that the Pre-Armistice Agreement could not have envisioned under the phrase 'civilian populations' 'persons engaged in civil pursuits . . . as contra-distinguished from those engaged in military service.' Pollock and Hewart as quoted in *Ibid*. The law officers added a further argument: Germany's liability to pay reparations were stated in the Pre-Armistice Agreement as deriving from her 'aggression.' Therefore, at the moment of Germany's aggression against Belgium in 1914, the 'civilian population of the Allies,' so the Solicitor-General and the Attorney-General argued, might have comprised the Allied peoples as a whole, that is, 'the population as it would have been considered at the outbreak of the war, namely a population engaged in civil and industrial pursuits.' This led the law officers to conclude that Germany's obligation to pay reparations extended to 'all payments made by the Allies necessary to restore the status quo,' including payment of pensions. Pollock and Hewart as quoted in *Ibid* 735 - 736. The law officer's argument was thus essentially for an indemnity of all the Allied war costs.

[1174] *Ibid* 736.

[1175] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984.

[1176] Thomas Lamont as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 736. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76. It should also be noted that on 29 March, two days after Lord Sumner had argued his case for reparations to the American delegates on the reparations Commission, John Foster Dulles, the chief legal advisor to the American delegation at Paris, framed a reply that 'dissent[ed] sharply] from Sumner. A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 735. Dulles argued that adding pensions to the reparations amount would violate the Pre-Armistice Agreement - 'the same logic that ruled out war costs should also rule out pensions.' M Trachtenberg 'Reparation at the Paris peace conference' (1979) 51 *The Journal of Modern History* 32

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Wilson was even more scornful of the legal opinion of the law officers of the Crown, as Pollock and Hewart attempted to resurrect a British claim for indemnities - the same claim that Wilson had categorically abnegated previously.[1177]

2.3 Smuts 'legal' opinion of 31 March 1919

Mindful of the 'great esteem'[1178] in which Wilson held Smuts because of the latter's championship of the League and his ability,[1179] and of the influence Smuts exerted upon Wilson regarding the issue of mandates,[1180] the 'ever-resourceful'[1181] Lloyd George turned to Smuts.[1182]

Smuts 'rose to the occasion,'[1183] and it was thus that he found himself late in the evening on 30 March 'occupied writing a legal opinion, a thing I had not done for more than twelve years.'[1184] 'It was on the burning question of Reparations,' Smuts informed Margaret Gillett:[1185]

[1177] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 736. FS Crafford notes: 'In spite of numerous spurious arguments on the part of the sophists the President would not yield to them.' FS Crafford *Jan Smuts: A biography* (1946) 170.

[1178] FS Crafford *Jan Smuts: A biography* (1946) 170.

[1179] JC Smuts *Jan Christian Smuts: A biography* (1952) 207.

[1180] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76.

[1181] *Ibid* 76. Elsewhere, Lentin writes: 'From his capacious bag of tricks, with an insight mounting to genius, he pulled out - General Smuts.' A Lentin *Guilt at Versailles: Lloyd George and the prehistory of appeasement* (1984) 56.

[1182] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 105. JC Smuts claims that it was Wilson who called on Smuts to 'establish a compromise between Lloyd George's election pledge to the British people to demand the entire costs of the war, and the assurance to the contrary given to the enemy by the Allies at the time of the armistice.' JC Smuts *Jan Christian Smuts: A biography* (1952) 207. This is not factually accurate. It is clear that Smuts wrote his legal opinion on reparations at the behest of Lloyd George. See, for example, A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 736; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 76.

[1183] FS Crafford *Jan Smuts: A biography* (1946) 170.

[1184] Smuts to MC Clark 31 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 95.

[1185] *Ibid*.

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> [A]nd the Prime Minister wanted my opinion to show to Wilson as he says Wilson will not listen to the English lawyer [Sumner] but will pay attention to what I say! It is a farcical world.

In light of the authorship of this legal opinion, it merits extensive quotation.[1186] According to Smuts, the measure of Germany's liability to pay reparations depended 'in the main' on the last reservation made by the Allies to the Fourteen Points, as President Wilson had agreed to, and the German government had accepted in armistice negotiations, this reservation.[1187] And, in this reservation:[1188]

> [A] careful distinction must be made between the quotation from the President, which refers to the evacuation and restoration of invaded territories, and the implication which the Allies find in that quotation and which they proceed to enunciate as a principle of general applicability.

The 'general principle . . . of far reaching scope' that the Allies found 'implied' in Wilson's provision for the restoration of invaded territories was that of:[1189]

> [C]ompensation for all damage to the civilian populations of the Allies in their persons or property, which resulted from the German aggression, and whether done by land sea or air.

By accepting this 'comprehensive principle' - as it clearly did pursuant to the Pre-Armistice Agreement - the German government 'acknowledged . . . liability to compensation for all damage done to the civilian population or property wherever and however arising' as the result of German aggression.[1190] Significantly, the 'President's limitation to restoration of the invaded territories only of some of the Allies was clearly abandoned.'[1191]

Smuts explained the crux of the case, *i.e.*, the interpretation of the phrase 'civilian population,' at the hand of an extensive example of a French shopkeeper in the devastated north of France:[1192]

> A shop keeper in a village in northern France lost his shop through enemy bombardment, and was himself badly wounded. He would be entitled as one of the civilian population to compensation of the

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[1186] Smuts' legal opinion is reprinted as 'Memorandum' dated 31 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 96 - 98.

[1187] *Ibid* 96.

[1188] *Ibid*.

[1189] *Ibid* 96 - 97.

[1190] *Ibid*.

[1191] *Ibid* 97.

[1192] *Ibid* 97 - 98.

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> loss of his property and for his personal disablement. He subsequently recovered completely, was called up for military service, and after being badly wounded and spending some time in the hospitals was discharged as permanently unfit. The expense he was to the French Government during this period as a soldier (his pay and maintenance, his uniform, rifle, ammunition, his keep in hospital, etc.) was not damage to a civilian, but a military loss to his Government, and it is therefore arguable that the French Government cannot recover compensation for such expense under the . . . reservation. His wife, however, was during this period deprived of her breadwinner, and she therefore suffered damage as a member of the civilian population, for which she would be entitled to compensation. In other words the separation allowances paid to her and her children during this period by the French Government would have to be made good by the German Government, as the compensation which the allowances represent was their liability. After the soldier's discharge as unfit, he rejoins the civilian population, and as for the future he cannot (in whole or in part) earn his own livelihood, he is suffering damage as a member of the civilian population, for which the German Government are again liable to make compensation. In other words the pension for disablement which he draws from the French Government is really a liability of the German Government, which they must under the . . . reservation make good to the French Government. It could not be argued that as he was disabled while a soldier he does not suffer damage as a civilian after his discharge if he is unfit to do his ordinary work. He does literally suffer as a civilian after his discharge, and his pension is intended to make good this damage, and is therefore a liability of the German Government. If he had been killed on active service, his wife as a civilian would have been totally deprived of her bread-winner, and would be entitled to compensation. In other words the pension she would draw from the French Government would really be a liability of the German Government under the . . . reservation, and would have to be made good by them to the French Government.

Smuts reasoned that the ‘plain, commonsense construction’ of the reservation led to the inescapable conclusion that:[1193]

> [W]hile direct war expenditures (such as the pay and equipment of soldiers, the cost of rifles, guns and ordinance and all similar expenditure) could perhaps not be recovered from the Germans, yet disablement pensions to discharged soldiers, or pensions to widows and orphans or separation allowances paid to their wives and children during the period of their military service are all items representing compensation to members of the civilian population for damage sustained by them, for which the German Government are liable.

Thus, according to Smuts' ‘plain, commonsense’ interpretation of the reservation, the sums that the Allied governments spent on the soldiers themselves, or the ‘mechanical

[1193] *Ibid* 98.

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appliances of war,' were not 'in any plain and direct sense' damage to the civilian population.[1194] However, any 'fair' interpretation of the reservation demanded that:[1195]

> [W]hat was or is spent on the citizen before he became a soldier, or after he has ceased to be a soldier, or at any time on his family, represents compensation for damage done to civilians and must be made good by the German Government . . . This includes are war pensions and separation allowances . . . in addition to reparation or compensation are all damage done to the property of the Allied peoples.

There is no doubt that it was Smuts' 'legal opinion' that finally turned the tide and won the day for Lloyd George.[1196] Upon reading it, Wilson declared himself to be 'very much impressed.'[1197] He 'admires Smuts extravagantly,' wrote Robert Lansing contumeliously.[1198] Smuts' opinion affected the president 'to a striking degree,'[1199] and, according to the American delegates, it 'was the final argument which overbore the last scruples of the President.'[1200] Of the effect of Smuts' opinion on Wilson, Millin writes:[1201]

[1194] *Ibid*.

[1195] *Ibid* 98. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 77; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 273 - 274. Lentin extrapolates from all three of the British legal opinions a theme derived from the same basic premise: '[That in the conditions of mass conscription imposed by modern war no meaningful distinction could be drawn between civilians and non-civilians.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 737.

[1196] 'Fortunately [for Lloyd George,] states MacMillan, 'Smuts had come up with an ingenious solution.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 186. MacMillan notes that 'Wilson listened to Smuts where he would not have listened to Lloyd George.' *Ibid* 187. In Keynes' view, Wilson's tender conscience was conveniently salved by Smuts' casuistry. Keynes wrote: 'At this straw the President's conscience clutched, and the matter was settled.' Keynes as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 744.

[1197] Wilson as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 730; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 77. And, argues Lentin, '[i[t was on the strength of that impression that he [Wilson] took his fateful decision.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 730.

[1198] Lansing as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 77.

[1199] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984.

[1200] As quoted in FS Crafford *Jan Smuts: A biography* (1946) 170.

[1201] SG Millin *General Smuts volume 2* (1936) 219 - 220.

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> Woodrow Wilson, already entranced by their community concerning the League of Nations, and seeing in Smuts something come from a world that was not this savage Europe - something different and dependable - suddenly decided to throw over the opinions of all those intolerable lawyers and rely on Smuts' words alone.

When Wilson met with his own advisors on 1 April 1919, the day after Lloyd George had tabled and discussed Smuts' 'legal opinion' at a meeting of the Big Four, John Foster Dulles comprehended that Smuts' opinion had caused Wilson to change his mind.[1202] The American economic advisors, with Dulles as their spokesperson, pleaded strenuously with the President that the inclusion of pensions and separation allowances 'flew in the face' of the Pre-Armistice Agreement, and that 'all the logic was against it.'[1203] Wilson's rejoinder has become part of the Peace Conference lore: 'Logic? I don't give a damn for logic . . . I am going to include pensions.'[1204]

Keynes execrated Smuts' opinion as a 'masterpiece of the sophist's art;'[1205] as 'mere logic-chopping, unworthy of consideration;' as 'flimsy and worthless;' and as 'little more than a trick.'[1206] Keynes was perturbed not only over the 'calamitous'[1207] consequences

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[1202] G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984.

[1203] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 730; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984. Millin adds that, '[a]fter Smuts gave his opinion, Wilson's advisers came to him saying there was not a single lawyer in the American Delegation who could bring himself to agree with Smuts.' SG Millin *General Smuts volume 2* (1936) 220.

[1204] Wilson as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 726. See also FS Crafford *Jan Smuts: A biography* (1946) 170; SG Millin *General Smuts volume 2* (1936) 220; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 77; M MacMillan *Paris 1919: Six months that changed the world* (2001) 187; G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984; A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 89; M Trachtenberg 'Reparation at the Paris peace conference' (1979) 51 *The Journal of Modern History* 45; JC Smuts *Jan Christian Smuts: A biography* (1952) 207. Thomas Lamont, one of the Treasury Department's representatives at the Paris Peace Conference, commented that the President's 'irritated dismissal of logic' was 'not a contempt of logic, but simply an impatience of technicality, a determination to brush aside verbiage and get at the root of things.' Lamont as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 744 - 745.

[1205] JM Keynes *The economic consequences of the peace* (1920) 49.

[1206] Keynes as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 729, 731,737. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 78.

[1207] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 540.

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that inclusion of pension and separation allowances would have on the final bill - inflating reparations 'by about twice as much . . . as all other claims added together,'[1208] thus actually trebling the demand on Germany.[1209] He also believed that including these items in the bill for reparations in the first place was 'indefensible,'[1210] and 'manifestly and incontrovertibly illicit.'[1211] Keynes averred that Smuts had acted as devil's advocate for Lloyd George.[1212] *This* [Smuts' opinion] 'is the argument on which, in the end, our case was based,' Keynes declared contemptuously.[1213]

On the other hand, however, Dulles - who disagreed with Smuts' opinion - nevertheless opined that:[1214]

> Whatever one's personal views may be, anyone who considers this subject in a spirit of fairness can hardly deal in a contemptuous and offhand way with the sincere and reasoned judgment of men such as General Smuts.

Upon reading Keynes' *The economic consequences of the peace*, Dulles acknowledged in a letter to *The Times* that, although he 'personally reached the opposite conclusion' to his British colleagues, '*though with considerable doubt*, that pensions were not properly chargeable to Germany, many people, whose intellect and sincerity command the confidence of the world reach a contrary conclusion.'[1215] Dulles, remarked: 'It was after all only Mr Keynes's personal and restricted interpretation.'[1216]

[1208] JM Keynes *The economic consequences of the peace* (1920) 142.

[1209] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 728.

[1210] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 540.

[1211] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 728. Lentin expounds upon Keynes' complaint as follows: '[T]hat by no stretch of the imagination, or rather, only by the widest conceivable perversion of language an thought, could the cost of military pensions be construed, in the words of the Pre-Armistice Agreement, as "damage done to the civilian population of the Allies"; and that "if words have any meaning or engagements of force," the Allies were categorically disentitled to claim them.' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 728.

[1212] *Ibid* 737.

[1213] Keynes as quoted in *Ibid* 737.

[1214] Dulles' letter to *The Times* 16 February 1920 as quoted in *Ibid* 737, 759

[1215] *Ibid* 741 (Lentin's emphasis).

[1216] *Ibid* 742.

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2.4 Evaluation: 'A bad means' of achieving 'distributive justice'

As Lentin points out, however, Keynes' verdict still commands assent among historians of the Peace Conference, from Temperley to Sharp, almost without dissent.[1217]

Alan Sharp, for example, charges that Wilson had allowed Smuts to persuade him that since soldiers were merely civilians in uniform, injuries to them constituted civilian damage. 'Quite why [Wilson] succumbed to this palpable nonsense is uncertain . . .'[1218] David Dubinski also refers no less than three times to Smuts' 'infamous memorandum.'[1219]

To ascertain whether the assault on Smuts' opinion by Keynes and others as disingenuous 'legal quibbles'[1220] were unjust and overdrawn, or whether it was, in Dulles' words, a 'sincere an reasoned judgment,' one has to gain a better understanding of Smuts' understanding of, and pronouncements on, the reparations question outside of his fateful opinion of 31 March 1919.

Writing to his friend, Margaret Gillett, in 1921, Smuts disclaimed any responsibility for the final result of the reparations saga:[1221]

> My opinion to the Big Four was written at their express request, went on legal grounds which I think were quite correct, and were approved by the greatest jurists at the conference . . . The Big Four had the confidence in me to consult me in preference to the other lawyers and in accepting my reasoning . . . But I accept no blame for it, as it was done in good faith and expressed my view of a legal matter.

[1217] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 730, 737.

[1218] A Sharp *The Versailles settlement: Peacemaking in Paris, 1919* (1991) 89.

[1219] D Dubinski 'British liberals and radicals and the treatment of Germany 1914 - 1920' PhD dissertation Cambridge University 1992 as cited in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 756.

[1220] Keynes as quoted in *Ibid* 729. Or 'flimsy,' 'worthless,' and 'jesuitical' in Keynes' barbed and mocking prose. Keynes as quoted in *Ibid* 740.

[1221] Smuts to MC Gillett 3 January 1921 in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 163.

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Smuts continued to toe this line. In a press statement in 1923, after he had been 'taunted in the Union Parliament about his opinion on reparations,'[1222] Smuts gave, *inter alia*, the following explanation:[1223]

> The Big Four . . . raised the purely legal question whether . . . the claim for pensions and allowances could be included in the reparations amount . . . I was one of the lawyers at the conference whom the Big Four consulted on this point . . . I ask how responsibility could be attached to me for an opinion on a technical question of law?[1224] A lawyer who gives a legal opinion on a statement of facts does not thereby become responsible for the actions of the client who has consulted him. It may be said that my opinion was wrong. Mr Keynes, who is not a lawyer, has said so.[1225] I can only say that I had no doubt in the matter. And I know that many of the greatest lawyers at the conference shared my opinion[1226] . . . The Americans lawyers differed, but it was not my fault that President Wilson, himself a distinguished jurist, adopted my argument and not theirs.

[1222] SG Millin *General Smuts volume 2* (1936) 218. Keith Hancock also notes: '[B]efore long, Smuts was being accused by the Nationalist opposition in the Union Parliament of having multiplied by three the staggering bill imposed upon Germany (so the orators declared) by her conquerors.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 541. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 78. Ingham also notes that: '[I]t is clear that others assumed his opinion represented a case for treating Germany harshly.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 105.

[1223] 'Press statement (1923)' J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 163. Van der Poel describes the background to Smuts' press statement as follows: 'The charge that Smuts had been responsible for greatly increasing the amount of reparation which Germany was required to pay by the treaty of Versailles had its origin in the publication of his memorandum on pensions and allowances by B.M. Baruch [one of the American plenipotentiaries on the Commission on the Reparation of Damage] and comment upon the memorandum in a review of Baruch's book by J.M. Keynes. H.G. Wells, returning from the Washington conference in early 1922, declared that it was Smuts who had added the last straw to the intolerable load put upon Germany. When, a year later, Hertzog repeated and enlarged the charge in the Union house of assembly, Smuts at last defended himself against it in this statement to the press on 6 - 7 February 1923. *Die Burger* printed it in Afrikaans but, in a long editorial note, preferred to believe H.G.Wells, whose comment it quoted, and added: 'Generaal Smuts mis die moed om eerlik sy fout te erken en die sedelike krag om dit te probeer herstel.' (General Smuts lacks the courage honestly to admit his fault and the moral strength to try to put it right.)' *Ibid* 162 (Internal references omitted).

[1224] Ingham notes that Smuts 'claimed that he had approached the task in a detached, legal manner and that his reply was not a personal but a legal opinion.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 105.

[1225] Keynes' strongest argument against the inclusion of pensions in the reparation bill was the enormous amount which they added to Germany's liability, and hence, in his view, 'the difference between a demand which can be met, and a demand which cannot be met.' Keynes as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 742.

[1226] Smuts continued: 'The late lord chancellor [Lord Birkenhead], the present lord chief justice [Lord Hewart], Lord Sumner, the distinguished lord of appeal in the house of lords, the present English attorney-general [Sir Douglas Hogg], all held the same view. And I could mention many of the greatest continental lawyers who also agreed.' 'Press statement (1923)' reprinted in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 163.

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Millin opines that Smuts did not know that his opinion 'was to have particular - indeed, final - significance'[1227] She quotes Smuts as saying: 'I assumed at the time that I was only one of the many who were giving opinions about reparations.'[1228]

However, Smuts was more than a little disingenuous when he disavowed responsibility for the result of his opinion. It seems clear that Smuts prepared his opinion for President Wilson specifically, and not merely for the Big Four generally. In his letter to Margaret Gillett, Smuts stated: '[T]he Prime Minister wanted my opinion to show to Wilson as he says Wilson will not listen to the English lawyer but will pay attention to what I say.'[1229] A reasonable argument is thus that Smuts had set out expressly to convince Wilson.

This thesis elsewhere refers to the deep intellectual communion between Smuts and Wilson.[1230] Smuts knew that Wilson would not be susceptible to purely legal arguments, as the two statesmen shared an abhorrence of legalism in international affairs. Smuts therefore based his opinion on a 'plain, commonsense [as opposed to 'legal'] construction'[1231] of the Allied reservation - a construction he had every reason to believe would find favour with Wilson. Indeed, Ferdinand Czernin contrasts the views of Sumner and Smuts: 'Smuts set forth in human terms what Sumner had attempted to formulate in legal phraseology.'[1232]

This brings one closer to the reasons why Smuts agreed to Lloyd George's supplication that he write this opinion. For the question looms: Why did Smuts - whom no-one could accuse of being 'extreme, illiberal or anti-German,' who was 'conspicuous throughout the Conference for counselling moderation, not least in the matter of reparations . . .' and who indeed, 'when all hope of this had foundered, first encouraged

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[1227] SG Millin *General Smuts volume 2* (1936) 220.

[1228] *Ibid*.

[1229] Smuts to MC Gillett 31 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 95.

[1230] See Chapter 3 (4) above.

[1231] Memorandum dated 31 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 98.

[1232] Czernin as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 756. Lentin believes that it was less the memoranda of Smuts and Sumner that differed than their personalities and their effect on Wilson. *Ibid*.

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Keynes to write what became *The economic consequences of the peace*'[1233] - advocate for the inclusion of war pensions and separation allowances?

This was one instance in which the idealistic and pragmatic facets of Smuts' personality - facets that were otherwise habitually in tension - in tandem constrained Smuts to argue in favour of the inclusion of pensions and separation allowances in the reparations bill.

Given that Germany had agreed to pay reparations in the Pre-Armistice Agreement, Smuts' conduct was actuated by the strong conviction that it would have been 'ludicrous economically and indefensible morally' for the British Empire to be denied some benefit from the reparations payment, while simultaneously yoked with the main burden of the inter-Allied war debt (for the ultimate benefit of the United States).[1234] Millin observes that:[1235]

> What Smuts saw confronting him was not a form of words, but a question of right or wrong.[1236] There is in Smuts a belief in his own conception of justice which has the power to override even that law he thinks the basis of every aspect of the universe.[1237]

[1233] A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 729 - 730. Smuts did later think the best of it and advised Keynes to abandon the project. See Smuts to JM Keynes 1 July 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 266.

[1234] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 541; FS Crafford *Jan Smuts: A biography* (1946) 170. See also K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 105.

[1235] SG Millin *General Smuts volume 2* (1936) 218. MacMillan is less absolutory: 'High-minded, moralistic, and clever, Smuts persuaded himself that he had not been inconsistent. In his own defense, he claimed that he had simply expressed an opinion shared by most of the legal experts at the Peace Conference. More revealingly, he wrote that, if pensions had been excluded, France would have got most of the reparations.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 186 - 187.

[1236] Lentin comments: 'Wilson was persuaded by Smuts of the broad, the just, the after all obvious stand. It was right that Germany should be required to compensate the victims of her acknowledged "aggression," and whom should these include, if not the cripple, the widow and the orphan? The function of equity being to look beyond the letter of the law to where justice beckons . . .' A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 744.

[1237] As an example of Smuts' 'own conception of justice,' Millin relays the incident in 1914 when Smuts had extra-judicially deported nine strike leaders 'because there was no legal way of punishing them' SG Millin *General Smuts volume 2* (1936) 218.

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Smuts' idealism - his 'own conception of justice' - simply could not brook a result which would be so grossly unfair to the British Empire. He said later to one of his biographers:[1238]

> '[C]ivilian damages' could be interpreted either narrowly or widely, but a narrow interpretation would give France and Belgium almost everything and England almost nothing, and a wide interpretation would result in a *just* award.

In this, Smuts was of one mind with the Prime Minister. Lloyd George postulated a rhetorical question that exemplified the 'artificial and pettifogging' nature of fine legal distinctions, and 'exhibited in the clearest light' the justice of Britain's claim:[1239]

> Do you mean to say that Germany was to pay compensation for a broken chimney-pot on a French cottage, but not for the dependents of a British soldier killed defending it? Do you set more value upon a chimney than you do upon a soldier's life?

Hancock contends that Smuts' opinion in favour of including war pensions and separation allowances in the bill for reparations was a 'bad means' of achieving 'distributive justice;'[1240] that Smuts made a 'bad mistake.'[1241] Millin agrees with the tenor of Hancock's argument, and asserts that perhaps it would have been better if Smuts simply exclaimed, like Wilson, 'Logic! Logic! I don't give a damn for logic! I am going to include pensions!'[1242] Then, continues Millin, Smuts 'might not . . . for the rest of his days, have found himself in a false position from which, despite all his work against reparations, he has never been able to escape.'[1243]

[1238] Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 220 (my emphasis).

[1239] Lloyd George as quoted in A Lentin 'Maynard Keynes and the "bamboozlement" of Woodrow Wilson: What really happened at Paris (Wilson, Lloyd George, pensions and pre-armistice agreement)' (2004) 15 *Diplomacy and Statecraft* 742.

[1240] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 542. Hancock adds: '[A]lthough in the intellectual and emotional muddle of that time it would have been hard to win acceptance for a better one . . .' *Ibid* 542. Hancock further argues that 'only a small part' of the 'responsibility for choosing this bad means' rested upon Smuts. *Ibid* 542. Smuts' share of the blame is certainly contestable, but that issue falls outside the scope of this thesis.

[1241] *Ibid* 542.

[1242] SG Millin *General Smuts volume 2* (1936) 225.

[1243] *Ibid.*

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Smuts himself stated in 1935 that he would not have given his opinion in favour of the inclusion of pensions and separation allowances, had he known what use the French would make of it:[1244]

> The French used it to swell the reparations amount to fantastic proportions, and it became a vehicle of injustice to Germany - one of those things that are responsible for the Germany of today . . .[1245]

Smuts had hardly written his opinion 'when it became his passion to undo it.'[1246] '[W]ith all that thoroughness and persistence which he had always given to big causes,' states Crafford, 'he now gave himself wholly to the task of undoing the mischief that had been wrought.'[1247] Of his efforts in this regard, Smuts stated to the press in 1923:[1248]

> Both in the British Empire Delegation and out of it in other sections of the conference I used every scrap of influence as I possessed to get the reparation figure down to a fair, moderate and fixed amount. It is perfectly well known to those taking part in the conference that I was probably the most active protagonist at the conference for fixing the reparation amount at a reasonably low figure. I incurred bitter odium and obloquy at the conference because of the energy with which I pushed my view on this dangerous subject.

There is ample evidence in the historical record to support Smuts' contention. For example, on the evening of 3 May, Smuts had invited British and American financial representatives to dine with him for purposes of discussing 'what could be done in regard

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[1244] Smuts as quoted in FS Crafford *Jan Smuts: A biography* (1946) 171.

[1245] Crafford states that once this alarming fact became known, Smuts 'regretted intensely' the part he had played in effecting the inclusion of pensions and separations allowances in the final reparations scheme. FS Crafford *Jan Smuts: A biography* (1946) 171. Millin notes: '[O]ne might think, from the note of increased pain with which he henceforth protested against oppression of the vanquished, that his opinion hurt himself more than anyone else.' SG Millin *General Smuts volume 2* (1936) 225. Millin continues: 'His journey to Austria and Hungary the very day after writing it - the sight of those miserable capitals Mr. Nicholson describes, the starving countries where Smuts could not bear to eat more than a soldier's rations himself - must have added to his anguish in the most ironic, dramatic way.' *Ibid* 225 - 226. However, although Smuts regretted giving his opinion for this reason, he never admitted that it might have been wrong. As Millin notes: 'Not that he admits that his opinion was wrong. Able as Smuts is to put himself above most human weaknesses - even, perhaps, because it is his principle not to repine - he hates to admit what he hates to admit.' *Ibid* 225.

[1246] *Ibid* 229.

[1247] FS Crafford *Jan Smuts: A biography* (1946) 171.

[1248] Press statement (1923) in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 164.

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to reparations and finding credit for Europe to buy food and raw materials.'[1249] In relaying the results of this meeting to Alice Clark, Smuts said exasperatedly:[1250]

> The problem is as difficult as it is urgent. The Americans say they will help to find money and credit for Europe (Germany, etc.) but *not* if our reparations completely cripple those countries, for then they have to replace what we take away. We are bound politically to insist on reparations. At least the Prime Minister has given definite political pledges. So what is to be done . . . I am trying like a midwife to bring some workable scheme to life, but it is most difficult. Failure will be quite disastrous.

Smuts also did not hesitate to appeal directly to Lloyd George and Wilson. On 5 May 1919, as part of a memorandum to Lloyd George of suggested changes to the draft peace treaty, Smuts stated: 'The Reparation Clauses are in some particulars too drastic and will cripple Germany.'[1251]

On 14 May 1919 Smuts sent identical letters[1252] to both Lloyd George and Wilson in which he declared: 'The combined effect of the territorial and reparations clauses is to make it practically impossible for Germany to carry out the provisions of the Treaty.'[1253]

[1249] Smuts to A Clark 4 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 145.

[1250] *Ibid* (Smuts' emphasis).

[1251] Memorandum to Lloyd George 5 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 148. Smuts proposed 'the following alterations in detail, without touching the main scheme:'

(a) The first payment should be extended to end of 1921 instead of April 1921.

(b) The bond issue to be delete as it is unworkable.

(c) The selection of *equivalent* animals or articles from Germany for those destroyed in devastated areas to be deleted.

(d) The supply of coal and coal tar products by Germany to be deleted, as surrender of the Saar Basin is enough *quid pro quo* for destruction of French mines.

(e) Future ship-building by Germany for Allies to be deleted as it is against interests of British industry.

(f) Supply of dyes to be deleted as detrimental to British industry.

Ibid 148 - 149 (Smuts' emphasis).

[1252] 'At the foot of the document in the Smuts Collection, a typed copy, is a note in pencil as follows: "Pres. Wilson and Mr. L.G. were not informed that each had a similar letter."' *Ibid* 157.

[1253] Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in *Ibid* 157 - 158.

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When Lloyd George nominated Smuts to serve on the Commission on Austrian Reparation, Smuts declined 'point blank'[1254]:[1255]

> I have read the Minutes of the Supreme Council meeting at which the . . . question of demanding reparation from the new States carved out of Austria [was discussed]. While I am most willing, and indeed anxious, to help with the work, I do not think . . . that my going on the Commission will serve any useful purpose and my opposition to what seems to be your policy will only waste time where speed is urgent. For the imposition of reparation on a broken, bankrupt, economically impossible State like Austria, or a new friendly State like Czecho-Slovakia, which rendered great services to our cause . . . seems to me a hopeless policy, which could only lead to the most mischievous results. I am against payment of all reparation by these countries for damage done by the dead and dismembered Austro-Hungarian Empire.

Lloyd George immediately responded and protested that Smuts has misapprehended his policy:[1256]

> The enemy States of Austria and Hungary should . . . pay reparation to the extent of their capacity to pay, once the economic situation in Central Europe has begun to improve. As to the States that are now Allies, I am not concerned that they should pay reparation. What I do contend, however, it that these new States should bear according to their capacity, a share of what it has cost to liberate them.[1257]

Smuts was 'unimpressed,'[1258] and saw in the Prime Minister's arguments nothing more than sagacious semantics. Whatever abstract principles were used to describe the liability

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[1254] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 91.

[1255] Smuts to D Lloyd George 26 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 197.

[1256] D Lloyd George to Smuts 26 May 1919 in *Ibid* 197 - 198. Lentin describes Lloyd George's response as 'immediate' and 'angry.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 91.

[1257] Lloyd George continued: 'If I read your letter aright, you mean to say that your policy is that Great Britain or South Africa are to bear a crushing loan of debt for the next thirty or forty years, while, Czecho-Slovakia, Jugo-Slavia, and the States which have been liberated by our arms, to say nothing of Austria or Hungary, are to carry no war debt at all. I must say that I cannot see how I am to justify to my own Parliament that after . . . three or four years' time, when Europe has once more recovered its productive ability, the farmers and manufacturers of Great Britain, Canada, Australia, New Zealand and South Africa, while burdened with the tremendous liability of the cost of the war, are to compete against the farmers and manufacturers of these new States, many of them very highly developed, but freed by our deliberate action from any equivalent burden . . . I should be glad to know, whether in view of this explanation, you can see your way to sit upon a Committee, whose purpose it is to ascertain what share of the burden should be equitably carried by these States and how it should be apportioned.' D Lloyd George to Smuts 26 May 1919 in *Ibid* 198.

[1258] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 91. 'This argument made no impression upon Smuts.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 527.

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of Austria, Hungary and the new states - whether a 'liberation payment' or a 'reparations payment' - he could not bring himself to serve on the Austrian reparations commission:[1259]

> [I] feel that, however much we may affirm abstract principles of liability in respect of the countries carved from the former Austrian Empire, we shall in effect get from them nothing but trouble, friction, and economic floundering. And we are fast shaping a policy which must drive all afflicted Central Europe into league with Germany against us in future . . .[1260] However willing to help, I fear I shall be the wrong man on this Commission.[1261]

Realising that he was not making any headway with Lloyd George, Smuts implored his friend Keynes - who by this time was a 'private citizen again,'[1262] having resigned from the British empire delegation in protest - to 'as soon as possible . . . set about writing a clear,

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[1259] Smuts to D Lloyd George 27 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 199.

[1260] Smuts continued: 'If my advice had been followed after my visit to Austria-Hungary, and an Economic Conference of all those States had been called (as they were unanimously asking for), we would today have had a scheme, evolved on the spot, on which a statesmanlike basis could have been laid for the economic co-operation and reconstruction of those countries. A Customs Union of those States might have emerged, and part of the proceeds of their external tariff might have gone into a Reparation Fund. Now we are working absolutely in the dark, with the risk that any scheme adopted in a hurry may prove nugatory, except as a source of friction and economic paralysis.' Smuts to D Lloyd George 27 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 199. Smuts recommended that the British representatives on the Supreme Economic Council should also sit on the Austrian reparations commission, as they had the 'economic facts as regards these countries before them, and they were 'actually working with the representatives of other Powers at a scheme for the rehabilitation of credit in these countries.' *Ibid*. Smuts proposed Lord Robert Cecil in his stead.

[1261] Millin comments as follows with regard to Smuts' letter to Lloyd George on 27 May: 'He [Smuts] had generally the sense, in these days, of being the wrong man for the purposes of these men here in Paris - having just once, and so unhappily, been their right man.' SG Millin *General Smuts volume 2* (1936) 229. Smuts was less diplomatic with regard to this issue in his private correspondence. On 27 May he wrote to his wife: 'Yesterday they again wanted to put me on a Commission for Austria; but I have refused to serve on it as I no longer wish to tar myself with that brush. My suggestions, after my visit to Austria-Hungary were never carried out; had they been done, we should have had the facts at our disposal today and been able to do good work.' Smuts to SM Smuts 27 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 201 (translation). To Margaret Gillett he wrote on 28 May: 'I have had an amusing passage with the Prime Minister. I found on Saturday that he had nominated me on a commission for Austrian Reparation . . . The discussion on the Supreme Council at which this was done showed that he intended to wring blood out of poor Austria and the other States carved out of that old Empire.' Smuts to MC Gillett 28 May 1919 in *Ibid* 203.

[1262] On Sunday, 8 June 1919, Keynes wrote to Smuts from London: 'Dear General Smuts, I left Paris on Saturday, having first pretty completely burnt my boats by letters to the Prime Minister and others. So I must now be considered a private citizen again - Thank Heaven.' JM Keynes to Smuts 8 June 1919 in *Ibid* 221 - 222.

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connected account of what the financial and economic clauses of the Treaty actually are and mean and what their probable results will be.'[1263]

Smuts' reason for appealing to Keynes was obvious: He believed, like Keynes, that the financial provisions of the draft treaty would complete the war's economic destruction of Europe.[1264] Like Keynes, Smuts also could not convince Lloyd George (and, through Lloyd George, the Council of Four) that they were 'drawing new lines on the map,' where they should have been establishing a free trade area; that they were quibbling with one another over the inter-Allied war debt, where all debt should simply have been cancelled; and that they imposed 'crippling' reparations upon Germany out of vengeance, where they should have ensured Germany's economic survival in addition to its reparations obligations.[1265]

Smuts opposed the reparations provisions of the draft treaty to the very last. Even after having failed to win his fellow representatives over to his position and convince them of the folly of the reparations provisions of the Treaty in final form, he nevertheless returned to the theme of reparations in his statement on the Peace Treaty that was issued to the press on the afternoon of 28 June 1919, after he had signed the Treaty of Versailles under protest:[1266]

> There are indemnities stipulated, which cannot be exacted without grave injury to the industrial revival of Europe, and which it will be in the interests of all to render more tolerable and moderate.

[1263] Smuts to JM Keynes 10 June 1919 in *Ibid* 222. As was customary with Smuts, he had already definitively conceptualised the book he implored Keynes to write: 'It should not be too long or technical, as we may want to appeal to the plain man more than to the well-informed or the specialist.' *Ibid* 222 - 223. Keynes responded to Smuts on 12 June: '[I] shall be ready at any time for what you suggest and would be able to complete the work at short notice and with very little delay. The thing is quite clear in my head and only needs writing out.' JM Keynes to Smuts 12 June 1919 in *Ibid* 228. Smuts did later think the better of his suggestion to Keynes and attempted to persuade the economist not to write his book: 'After giving the matter my closest consideration I have seen no great profit in a regular attack on the Treaty. It is past and nothing can undo it except time and the great Mercy which works away all our poor human follies. Better to be constructive . . . You will find many opportunities to help the world, especially when the real trouble over the Reparation and financial clauses begins with Germany.' Smuts to JM Keynes 10 July 1919 in *Ibid* 266. Keynes, however, remained undaunted: '[W]e shall have to get to work very quickly with action to make the Treaty, or much of it, a dead letter, if Europe is to pull through. Both the *atmosphere* for stable government and the failure of productive processes strike me as having got *worse* even in the short period since you left this continent.' JM Keynes to Smuts 12 June 1919 in *Ibid* 280.

[1264] M MacMillan *Paris 1919: Six months that changed the world* (2001) 182.

[1265] *Ibid.*

[1266] Statement in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 256.

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In 1920, HW Temperley's *A history of the peace conference of Paris* seemed to ascribe to Smuts the responsibility for proposing that war pensions and separation allowances be included in the reparations bill. In addition, around this time, Bernard Baruch, one of Wilson's financial advisors in Paris,[1267] in his *The making of the reparations and economic sections of the Treaty*, published Smuts' opinion on reparation in full.[1268] In commenting on these works, Keynes wrote to Smuts:[1269]

> Writings about the treaty now multiply amidst recriminations and partial disclosures from secret documents . . . It looks as though they were going to saddle *you* with responsibility for the Big indemnity, which is absurdly unfair, to anyone who knows the facts - though I am not sure it won't serve you right for writing that memorandum!

The last word in this contentious issue may fittingly be left to Smuts. On 24 March 1949, 30 years after his reparation opinion, Smuts wrote to Roy Forbes Harrod, Keynes' biographer:[1270]

> My attitude on the question of the reparation amount and the inclusion of pension in it was well understood at the time . . . I was totally opposed to an inordinate sum being fixed for reparation, and never meant the inclusion of civil pensions to increase the amount contemplated. My sole object was to see that justice was done to Britain in the distribution of the amount settled, and the inclusion of pensions would have helped in that direction.

[1267] SG Millin *General Smuts volume 2* (1936) 259.

[1268] Millin expounds thus on Baruch's book: 'In this book, Mr. Baruch published in full that "exceptionally secret" document of which "practically no one except the Prime Minister and the President knew" - Smuts' Reparation Opinion; and after this it could never again be denied that Smuts had, at least, some responsibility for the Reparations he abhorred . . .' According to Millin, Baruch's book also 'confirmed the belief that Smuts' opinion influenced Wilson.' *ibid* 259.

[1269] JM Keynes to Smuts 22 October 1920 in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 48 (Keynes' emphasis). As Lentin notes: '[E]ven Keynes regretted the irony that Smuts of all men should take the blame.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 78.

[1270] Smuts to RF Harrod 24 March 1949 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 288. Harrod had given Smuts an opportunity to comment on the chapters of *The life of John Maynard Keynes* dealing with the peace treaty. Smuts stated, *inter alia*: 'I think Keynes overstressed the pensions aspect in his book [*The economic consequences of the peace*]. The way the total amount was fixed shocked him, and he would naturally use any fair argument to strengthen his case. I understood all this and never resented his attitude, though I did think he made too much of the pensions case.' *Ibid*.

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CHAPTER 6

SMUTS' STRUGGLE FOR REVISION OF THE TREATY OF VERSAILLES: 'I FIND MYSELF IN A WORLD WHERE DESPAIR SEEMS ALREADY TO HAVE SETTLED ON MEN'S SOULS'

I FROM HOPE TO APPREHENSION

1. 'A bad spirit about'

The period from late March to late June of 1919, part of the 'unhappiest time' of Smuts' life,[1271] exemplifies, perhaps like no other, the tension between the idealist and pragmatist facets of his persona.[1272] During this period, he not only struggled outwardly, publicly, against the emerging treaty, but he was also waging an agonising inward, private, battle to come to a perilous decision - should he sign the treaty or not? During this period, when Smuts waged his battle at Paris for a peace of moderation, he knew disillusionment and defeat like never before.

Smuts nevertheless fought unceasingly for the 'generous treatment of Germany as a vital factor in the restoration of human civilization.'[1273] Sarah Gertrude Millin notes that he spoke and wrote incessantly about the evils of the emerging treaty terms:[1274]

> From his immediate associates he went to the Peace Conference, and from the Peace Conference to Mr. Lloyd George personally, and from Mr. Lloyd George to Woodrow Wilson, round and round and over and over, until he felt that he was becoming wearisome, and had to break his pride to continue.

[1271] See, for example, SG Millin *General Smuts volume 2* (1936) 189.

[1272] As Hancock and van der Poel point out, the period of the Paris peace conference was far more closely documented than any other in Smuts' life. He wrote almost every day, and sometimes twice a day, to his Quaker friends, Margaret Gillett, Arthur Gillett, and Alice Clark, as well as many letters to his wife, the irregular mail to South Africa permitting. During this period Smuts 'passed through an acute crisis of conscience and faith in which the whole value of his work during the war and his hopes for the future of Europe' came into question. He welcomed, and needed, the advice and support of those he felt understood him best. Thus, Smuts' papers 'contain a remarkable record of a crucial event in the history of the West, as reflected in the thought and feeling of one man.' WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 3.

[1273] Smuts as quoted in FS Crafford *Jan Smuts: A biography* (1946) 173. Smuts demanded that 'the final sanction of this great instrument [the treaty] must be the approval of mankind.' Smuts as quoted in *Ibid*.

[1274] SG Millin *General Smuts volume 2* (1936) 230. Wilson likewise comments that Smuts 'made every possible effort' to secure a magnanimous peace. D Wilson *Smuts of South Africa* (1946) 88.

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Lloyd George's biographer, ET Raymond, wrote in 1919 that, with Smuts' 'piercing intelligence . . . he, above all other statesman, realizes that this is no dynamic struggle to be patched up by another Berlin or Vienna conference.'[1275] However, his 'was a lonely voice crying in the wilderness.'[1276]

Even during the first month of the Conference, when generally he could still see the sun instead of the shadows, his political acuity alerted him to 'a bad spirit about':[1277]

> I feel sometimes deeply concerned; but I do hope and trust and pray that things which really matter will be all right, and will in the end pull the rest through. It is curious how little people learn, how soon they forget the terrible lessons of the immediate past . . .

2. 'An impossible peace, conceived on a wrong basis'

On 26 March 1919, Smuts penned a long letter to Lloyd George, setting forth his concerns.[1278] 'As a commentary on events,' writes Antony Lentin, Smuts' letter to Lloyd George 'is one of the most striking, though unofficial, documents of the Conference.'[1279] That Smuts could impart 'some of the reflections stirred in [him] by what [he has] learnt'[1280] to Lloyd George with such 'brutal frankness,'[1281] shows 'the measure of the man and his standing.'[1282]

[1275] FS Crafford *Jan Smuts: A biography* (1946) 173.

[1276] *Ibid*. A 'voice . . . muffled by the surging tide,' is how Joy Joseph describes Smuts' futile efforts to influence the key decision-makers at Paris. J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 136.

[1277] ' . . . mostly of course among the *other* fellows!' Smuts continued. Smuts to MC Gillett 4 February 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 60.

[1278] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 510; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 65.

[1279] *Ibid* 65.

[1280] Smuts to D Lloyd George 26 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 83.

[1281] Smuts to A Clark 28 March 1919 in *Ibid* 90.

[1282] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 65.

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'I fear it won't be pleasant reading to you,' Smuts warned Lloyd George, but he assured the Prime Minister, his criticism was 'well-meant' and intended to be 'helpful.'[1283] Smuts was alarmed at the 'sort of peace'[1284] they were preparing:[1285]

> I am seriously afraid that the peace to which we are working is an impossible peace, conceived on a wrong basis . . . that it will prove utterly unstable, and only serve to promote the anarchy which is rapidly overtaking Europe.[1286]

The Allied leaders seemed to have lost sight of two fundamental principles that were 'quite clear and elementary:'[1287]

1. We cannot destroy Germany without destroying Europe;
2. We cannot save Europe without the co-operation of Germany.

To Smuts' mind, the cooperation of Germany was the *sine qua non* for lasting peace in Europe:[1288]

> [W]e are now preparing a peace which must destroy Germany and yet we think we shall save Europe by so doing! The fact is, the Germans are, have been, and will continue to be, the *dominant factor* on the Continent of Europe, and no permanent peace is possible which is not based on that fact.

A mere six weeks prior to his letter to Lloyd George, Smuts was 'much haunted by the dread that [the Peace Conference] may be another Congress of Vienna . . .'[1289] Now

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[1283] Smuts to D Lloyd George 26 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 84.

[1284] *Ibid* 83.

[1285] *Ibid* 84.

[1286] 'I say nothing about the long delays of our Conference work, and the rapid growth of dissatisfaction in all the Allied countries,' Smuts continued, '[o]ur daily communiqués with their record of small details which appear to the world to be trivialities and futilities, are enough to raise great discontent.' *Ibid* 83 - 84.

[1287] *Ibid* 84.

[1288] *Ibid* (Smuts' emphasis). Smuts' argument was 'prudent and prophetic,' remarks Antony Lentin. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 68.

[1289] ' . . .; for in that case our League of Nations will and must become another Holy Alliance built on fear and distrust and finally becoming ab instrument of reaction in a Bolshevist world.' Smuts to MC Gillett 8 February 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 63.

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Smuts held those diplomats of 1815 to be 'wiser in their generation.'[1290] After some 25 years of war with France, they at least 'looked upon France as necessary to Europe.'[1291]

Smuts feared that the Paris Peace Conference 'may prove one of the historic failures of the world.'[1292] And, undoubtedly with a view to posterity, Smuts warned:[1293]

> My fear is that . . . the statesmen connected with it will return to their countries broken, discredited men, and that the Bolshevists will reap what they have sown . . . I note the stand you have made against some of these things; but that is not enough. We shall be judged, not by our protests, but by our acts.

Smuts then commented specifically on 'a few details' to which the Big Three had already agreed.[1294] He was confounded by the proposed disarmament,[1295] and especially the territorial terms,[1296] that the Entente powers were preparing to impose on Germany:

[1290] Smuts to D Lloyd George 26 March 1919 in *Ibid* 84.

[1291] 'And yet we presume to look down upon them and their work!' Smuts exclaimed. *Ibid*.

[1292] *Ibid*.

[1293] *Ibid* 84, 85.

[1294] *Ibid* 84 - 87.

[1295] Smuts considered the proposed measures in this regard 'simply calculated to hand Germany over to anarchy.' *Ibid* 84. How could the Allied leaders even contemplate restricting the German army to 100 000 when 'Germany with her 70 millions' were wracked by 'intolerable internal conditions' and 'the most threatening external dangers' [here Smuts had in mind 'the Bolshevist wave from the east]? 'In poor unarmed Ireland with her four or five million inhabitants,' Smuts reminded the Prime Minister, 'we had to keep more than 100,000 troops at the crisis of war to maintain order.' *Ibid* 84.

[1296] Smuts noted the transfer to Poland of the port of Dantzig, 'an ancient German town with a German population,' as well as 'millions of Germans, some of them in solid blocks of old Prussian territory' [to form a Polish corridor to the sea]; the cession of the Saar Valley to France, in addition to Alsace-Lorraine; and the detachment from Germany of all its territory west of the Rhine. *Ibid* 85; See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 66 - 67. Smuts also warned against establishing new nation states neighbouring Germany, at Germany's expense, and without its active cooperation: 'The fact is, neither Poland and Bohemia [Czechoslovakia] will be politically possible without German goodwill and assistance . . . Instead of dismembering and destroying Germany, she ought in a measure to be taken into the scope of our policy, and be made responsible for part of the burden which is clearly too heavy for us to bear . . . It is necessary for Germany to be made to bear her share of the heavy burden of the new Europe, she ought not to be despoiled and treated as an international pariah, but rather taken by the hand by the Allies and helped to her feet again. Unless this is done, I fear we are ploughing the sands of the sea at this Conference. Without German good will, neither Poland or Bohemia will show any stable vitality, and they will become simply problems and burdens for the future politics of Europe . . . My view is that, in trying to break Germany in order to create and territorially satisfy these smaller States, we are labouring at a task which is bound to fail. We shall get no peace treaty now, and Europe will know no peace hereafter.' Smuts to D Lloyd George 26 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 85, 86; See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 68.

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> Are we in our sober senses, or suffering from shell-shock? What has become of Wilson's Fourteen Points, or of your repeated declarations against the humiliation and dismemberment of Germany?

In words that were to prove tragically prophetic, Smuts decried the proposed 'amputations of German territory'[1297] as 'most dangerous, and indeed fatal from the point of view of securing present and future peace.'[1298] 'If the Germans are like the rest of us,' Smuts stated to the Prime Minister, 'they . . . will throw back on their despoilers the responsibility for the resulting chaos. And for the future there is the legacy of revenge.'[1299]

Thus far in his letter to Lloyd George, Smuts had made prudential, pragmatic arguments for maintaining the balance of power in Europe, couched in language conspicuously devoid of moralising.[1300] However, in the last paragraph Smuts introduced ethical, idealistic deliberations, 'and with them an addition of ill-omen to the vocabulary of [practical] politics'[1301]:[1302]

> To conclude: even at this late hour I would urge that we revise our attitude towards Germany, and . . . treat her in a different spirit from that in which our proposals have so far been framed; avoid all appearance of dismembering her or subjecting her to indefinite economic servitude and pauperism, and make her join the League of Nations from the beginning . . . her appeasement now may have the effect of turning her into a bulwark against the oncoming Bolshevism of Eastern Europe . . . I fear, I greatly fear our present panic policy towards Germany will bring failure on this Conference, and spell ruin for Europe.

Appeasement was a word introduced by Smuts, that came in vogue during inter-war international relations.[1303] By the 1940s, the word had undergone etymological

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[1297] *Ibid* 67.

[1298] Smuts to D Lloyd George 26 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 85.

[1299] *Ibid*.

[1300] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 512.

[1301] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 512.

[1302] Smuts to D Lloyd George 26 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 87.

[1303] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 512. See also J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 136, 137. Saul Dubow also notes: 'In his long career as international statesman, the great phrase-maker had made words like "commonwealth," "appeasement," "trusteeship," and "mandates" his own.' S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 72.

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degeneration to such an extent that it became a term of abuse for the attempts at satisfying the unconscionable edacity of Hitler and Mussolini.[1304]

However, its original positive - its Smutsian - meaning, was not 'submission,' but 'conciliation;' not the 'folly of . . . the grovelling [sic] of the weak before the strong,'[1305] but the 'magnanimity of the strong towards the weak.' When Smuts used the word 'appeasement' on 26 March 1919, he thought of the example of Campbell-Bannerman, that 'shining example of international statesmanship'[1306]:[1307]

> My experience in South Africa has made me a firm believer in political magnanimity, and your and Campbell-Bannerman's great record still remains not only the noblest, but also the *most successful*, page in recent British statesmanship.[1308]

Smuts was not the only member of the British delegation alarmed by the military and political anarchy advancing across Europe from east to west.[1309]

After discussions between Sir Maurice Hankey and Sir Harold Wilson during the evening of 18 March, a memorandum was produced, almost certainly written by Hankey, that earnestly cautioned against following a strategy towards Germany that would leave the country defenceless against Bolshevist subversion, or, alternatively, draw it into

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[1304] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 512.

[1305] *Ibid* 513.

[1306] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 69.

[1307] Smuts to D Lloyd George 26 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 87 (Smuts' emphasis).

[1308] At his installation as Chancellor of Cambridge University on 10 June 1948, he stated to his audience that, in the wake of the Anglo Boer War, the former enemies learnt at long last to understand each other. An agreement pre-eminent on the history of statesmanship embodied their understanding. 'I would specially mention,' Smuts declared: '[O]ne whose name should never be forgotten . . . Campbell-Bannerman, the statesman who wrote the word Reconciliation or that page and that African scene, and thus rendered an immortal service to the British Empire, aye, to the cause of man everywhere.' As quoted in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 517 - 518. Hancock observes that, behind the great desk in the study at Doornkloof, Smuts had hung Campbell-Bannerman's portrait. For more than 40 years, Smuts kept alive the memory of the man, and he often recalled it to others in his letters and speeches. *Ibid*. In February of 1948, Smuts wrote and article, entitled 'Sir Henry Campbell-Bannerman and South Africa,' that appeared in the June 1948 issue of the *Glasgow High School Magazine*. In his letter to the headmaster accompanying the article, Smuts stated: 'I have written it with real pleasure and as a debt of honour to the memory of a great statesman.' Smuts to J Talman 16 February 1948 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 180

[1309] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 514.

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common cause with the Bolshevists.[1310] The memorandum asserted that Germany was equally well-placed to become 'the head and brain of Bolshevism' as the barrier against its westward expansion.[1311]

Independent of Smuts' protestations, by the end of March, Lloyd George had become extremely concerned, not only with the procedural shortcomings of the conference,[1312] but also the burdensome and punishing terms of the German peace that were emerging.[1313] On 22 March 1919, Lloyd George, with his closest advisors,[1314] including Kerr, Hankey, and Wilson, retreated for the weekend to the Hôtel de France et d'Angleterre in the Paris suburb of Fontainebleau to reconsider the treaty terms.

[1310] *Ibid*.

[1311] As quoted in *Ibid*. A copy of this memorandum is preserved among the Smuts papers with a note from his secretary, Lane, dated 26 March 1919: 'With Sir Maurice Hankey's compliments. He sent this to the P.M. a week ago.' However, as Hancock points out, there is no direct evidence to show whether or not Smuts had written his 'fiery' letter to Lloyd George before he received this memorandum. *Ibid*.

[1312] Especially the leakage of news from the deliberations of the Council of Ten. *Ibid* 513.

[1313] M MacMillan *Paris 1919: Six months that changed the world* (2001) 195.

[1314] There is an interesting anomaly in the historical record. Lloyd George said afterwards in *The truth about the peace treaties* that he took with him to Fontainebleau Hankey, Kerr, Wilson, and Smuts. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 514. George Curry also asserts that Lloyd George 'retired to the country with a select group of advisers, including Smuts, to produce the celebrated Fontainebleau memorandum of March 25.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 983. However, there is no record of Smuts being at Fontainebleau. Sir Henry Wilson mentioned the presence of Edwin Montagu, but not that of Smuts, in the Fontainebleau party. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 590. According to the recorded chronology, Lloyd George and his entourage arrived at Fontainebleau on 22 March, and opened discussion on that day, they continued their discussions and drafted a memorandum on 23 March, a final draft was completed on 24 March, and on 25 March Lloyd George signed the memorandum. According to Smuts' letters, he took leave of the Gilletts in England on 23 March, and he did not arrive in Paris until that evening, speaking to no-one, except for a casual conversation with Hughes, before retiring for the evening. Smuts to MC Gillett 24 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 80 - 81. He apparently spent the time from 24 March until putting pen to paper on 26 March 'getting the hang of things' in Paris, finding out 'what stage ha[d] been reached by the innumerable committees,' and trying to 'get in touch with the present state of our peace preparations.' Smuts to MC Gillett 24 March 1919 in *Ibid* 81; Smuts to D Lloyd George 26 March 1919 in *Ibid* 83. Hancock points out: 'It is almost inconceivable that his letter to Lloyd George . . . could have contained, among other things, its reference to 'broken and discredited men' if he had any understanding of what Lloyd George had just committed himself to [at Fontainebleau].' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 514 - 515. It is equally inconceivable that Smuts had gone to Fontainebleau without reporting the meeting to his friends and family in even a single of the numerous letters that flowed from his pen, almost daily, during this period.

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In the resulting Fontainebleau Memorandum of 25 March, Lloyd George committed himself to a substantial part of the program that Smuts 'was urging upon him.'[1315] The general propensity of this Memorandum was to 'drastically . . . scale down the demands which the French were striving to have enforced against Germany.'[1316]

After receiving Smuts' letter of 26 March, Lloyd George summoned Smuts for a 'man-to-man discussion.'[1317] Smuts believed that Lloyd George felt 'acutely the truth' of the views he expressed 'with brutal frankness'[1318] and 'perhaps undue severity.'[1319] It was clear to Smuts that the phrase 'broken and discredited men' was 'rankling' to Lloyd George.[1320]

Nevertheless, Smuts was convinced that the 'effect ha[d] been very great.'[1321] 'I found strong backing from the Prime Minister who still leans on me more than I thought was the case after the general election [in Great Britain at the end of 1918],' Smuts

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[1315] *Ibid* 515. It would be out of place in this thesis to set forth and discuss the entire content of this Memorandum. Suffice it to state that it was constituted by two parts: firstly, 'Some Considerations for the Peace Conference before they finally draft their Terms'; and secondly, 'An Outline of Peace Terms.' *Ibid*. George Curry notes that Smuts was, for the most part, in sympathy with the details of the Memorandum, 'though he felt the concessions were too limited.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 984.

[1316] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 515.

[1317] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 69.

[1318] Smuts to A Clark 28 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 90.

[1319] Smuts to MC Gillett 27 March 1919 in *Ibid* 89.

[1320] *Ibid*. Hancock comments that Smuts was likely correct in believing that Lloyd George 'was feeling ruffled by his letter of 26 March.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 515. 'Lloyd George may well have felt that he did not deserve just then to be lecture to. It is one thing to listen to the "still small voice" within oneself, but another thing to have its dictates poured into one's ear by an earnest colleague at the very time when one is already trying to do the very thing the colleague exhorts one to do.' *Ibid* 513. By March of 1919, reports Kraus, Smuts had earned a reputation of being 'not only a moralist, but a gadfly into the bargain . . . Lloyd George became nervous. Could one not find an adequate job for the incurable peacemakers? A job on the side lines? Indeed, one could. The line led straight to . . .Budapest.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 264. Smuts was well-aware of the Prime Minister's machinations. With reference to his imminent mission to Hungary, Smuts noted: 'As usual when I am pressing very hard on his conscience, he wants to send me on some distant mission.' Smuts to MC Gillett 27 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 89.

[1321] Smuts to A Clark 28 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 90. 'How deep that impression really was and how lasting its effect was another matter,' notes Antony Lentin insightfully. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 69.

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confided in Alice Clark.[1322] As always, Smuts' optimism was tempered by a strong dose of realism. He was well aware that he was dealing with a masterful political operative: 'He [Lloyd George] is at present leaning on, or to, me again, but one never knows the orbits of minds like his.'[1323]

It seems that Smuts' letter was opportune. It echoed Lloyd George's own revisionist sentiments as expressed in his Fontainebleau Memorandum.[1324] On the very day Lloyd George received Smuts' letter, he raised it in a meeting of the Big Three.[1325] Lloyd George, citing from Smuts' letter, stated to Wilson and Clemenceau that ceding the port city of Danzig to Poland was 'the opposite of statesmanlike,' and the proposed transfer to Poland of territory occupied by two million Germans amounted to 'a very harsh peace.'[1326]

Lloyd George ended with reading aloud Smuts' admonition that, whatever the terms of the peace, 'Germany would remain the *dominant factor* in Europe.[1327] However, Clemenceau and Wilson remained intransigent, and Clemenceau commented aloud that he hoped Smuts was not speaking as a friend of Germany.[1328]

[1322] Smuts to A Clark 28 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 90. In the same vein, Smuts wrote to Margaret Clark: 'I find the Prime Minister still leans on me more than I thought he was doing as we had tended to drift apart since the general election (which had taken place on 14 December 1918) and its orgies of wild statements and doings. However, the still, small voice is alway there and sometimes something happens which makes us listen to it.' Smuts to MC Gillett 27 March 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 87.

[1323] Smuts to MC Gillett 27 March 1919 in *Ibid* 89. 'As usual when I am pressing hard on his conscience,' Smuts continued, 'he wants to send me on some distant mission.' *Ibid*. After Smuts' letter of 26 March, Lloyd George did indeed propose that Smuts should lead a mission to Hungary to negotiate with the communist government of Bela Kun. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 515.

[1324] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 70.

[1325] *Ibid*.

[1326] Lloyd George as cited in *Ibid*.

[1327] *Ibid*.

[1328] *Ibid*. Crafford states, perhaps too emphatically, that Smuts' influence on Lloyd George was 'tremendous'. He continues: 'The British Prime Minister, according to his biographer, E.T. Raymond, "was peculiarly susceptible to the influence of the last speaker [Smuts], and from a talk with General Smuts he would go to a meeting of the 'Big Four' with proposals which made M. Clemenceau wonder (sometimes aloud) whether the Allies were to ask Germany's pardon for having taken the liberty of beating her."' FS Crafford *Jan Smuts: A biography* (1946) 174; See also JC Smuts *Jan Christian Smuts: A biography* (1952) 216.

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3. 'The terms of peace . . . will leave a trail of anarchy, ruin, and bitterness'

Upon his return from Budapest,[1329] Smuts continued to harbour sanguine expectations of a treaty of moderation, characterised by magnanimity towards Germany.[1330] In the meantime, Lloyd George had been pursuing his Fontainebleau agenda with a measure of success.

He and Wilson successfully dissuaded Clemenceau from continuing to insist on the detachment of the Rhineland from Germany to form a buffer state for the protection of France.[1331] Smuts, who wholeheartedly opposed military occupation for any period, exhorted Lloyd George to withstand Clemenceau's injunctions in this regard for any but the absolute shortest period of occupation.[1332]

Smuts also encouraged Lloyd George to resist the increasing agitation in Westminster,[1333] as well as from within the British Empire delegation - primarily from William Hughes (who threatened to publicise his dissent) - to 'turn[ ] the reparations screw harder than he thought prudent.'[1334]

[1329] See Chapter 4 (2) above.

[1330] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 79.

[1331] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 79. However, this concession from Clemenceau, which was the form of security that Marshall Foch insisted upon, came at a price: Lloyd George reluctantly agreed to the demilitarisation of the Rhineland, and military occupation by France for a period of up to 15 years of three zones west of the Rhine and their bridgeheads. In addition, Lloyd George and Wilson has offered France an Anglo-American military guarantee of intervention in the event of future aggression by Germany. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 79.

[1332] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 79.

[1333] In the 'coupon election' of 1918, Smuts had advised Lloyd George that his popularity was such that he need not promise the British electorate too much. However, Lloyd George, 'exhorted by his election agents had played upon the war weariness and anger' of the British electorate, and then had to redeem his promises in Paris. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 115. 'It was not because he led,' comments Millin, 'but because he marched with public opinion - offering to hang the Kaiser, and make Germany pay Britain's war debts - that Mr. Lloyd George so overwhelmingly won his election after the armistice. With this mandate from the people he went to Paris. To Paris three hundred and seventy members of Parliament sent him a telegram demanding fulfilment of his election pledges, and he was attacked in the House as pro-German.' SG Millin *General Smuts volume 2* (1936) 192.

[1334] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 79.

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In conversations with Smuts, Lloyd George expressed the fear that the mounting political pressure might soon prove too strong to resist.[1335] On 11 April 1919, Smuts wrote Lloyd George a letter sympathising with his plight, but also urging him to hold faithfully to the course which they had charted.

Smuts expressed his 'high appreciation of the herculean efforts' Lloyd George had made 'in surmounting difficulties which to any thoughtful observer were stupendous,' and he extended to the Prime Minister his 'best congratulations upon the results so far achieved.'[1336] Smuts continued:[1337]

> My sole reason in writing is to encourage you in the firm stand you have made, and to assure you of my wholehearted support of the peace terms in so far as they are settled . . . Upon our shoulders rests the responsibility of making peace, and if we think that the terms so far drafted are fair and just, we must take the responsibility and face the music, whatever Parliaments or peoples may say.

Smuts followed the moral and ideological reasons for his point of view, with the pragmatic:[1338]

> Any other course would, to my mind, spell disaster, nay death, to the British Empire and mean encouragement to the Bolshevist cause; but more than that, would strain relations between America and Britain to breaking point, a state of affairs which would not only be deplorable, but disastrous to the future peace of the world, and create a situation which I shudder to contemplate.

As Hancock notes, this letter was 'the last of the hopeful ones. From Smuts's point of view, the situation now changed rapidly for the worse.'[1339] 'The world is literally going to pieces,' Smuts wrote to Lord Paramoor, 'unless the cement of a new fellow feeling can succeed to bind the broken fragments together.'[1340]

[1335] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 79.

[1336] Smuts to D Lloyd George 11 April 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 120 - 121.

[1337] *Ibid* 121.

[1338] *Ibid*.

[1339] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 518.

[1340] Smuts to Lord Paramoor 17 April 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 122.

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Smuts was 'sorry to find that many Commissions have been inspired by a petty small spirit - not . . . vindictive, but simply small and paltry.'[1341] Of all the shortcomings, to Smuts, this was the worst:[1342]

> There is something of value even in vindictiveness, but in the merely small and trivial we seem to reach an absolute zero and limit which leaves me in a most unhappy impatient mood.

With reference to the Supreme Economic Council, Smuts vociferated:[1343]

> That is another talking shop which does nothing. Will the Lord never rid us of these useless debating societies? Oh, for an ounce of action, but I find myself in a world where despair seems already to have settled on men's souls. Despair, and solemn belief in words and talk.

From the perspective of the Big Three, time was fast running out. By mid-April, they were on tenterhooks to settle upon the treaty terms, as the German plenipotentiaries were soon to present themselves on demand at Versailles to receive the Allied terms.[1344]

However, 'such had been the lack of basic organising principles from the start and so many were the weeks that had been spent on secondary matters,' explains Antony Lentin, that the disparate reports drawn up by the various committees as 'statements of maximum demands,' were 'hurriedly collated without adequate coordination or review and incorporated unaltered as the terms of the draft Treaty.'[1345]

Smuts was furiously busy between mid to late April, trying to make sense of it all:[1346]

> [I] have come to find myself literally snowed under with work. Most of the Commissions have reported and their recommendations are being incorporated into the draft treaty; but naturally one wants to know what they have done. And so I have to wade through numerous intricate and verbose reports of

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[1341] Smuts to A Clark 23 April 1919 in *Ibid* 125.

[1342] *Ibid*. According to Lentin, Smuts concluded that the treaty as a whole was 'disastrous,' and that is was 'vicious in content and even in tone.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 81.

[1343] Smuts to A Clark 23 April 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 125.

[1344] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 80.

[1345] *Ibid*. The result, states Lentin, was 'a mish-mash [sic] of ill-assorted and incongruous provisions, good and bad.' *Ibid*. Hancock explains that: 'It had not been expected originally that the reports of the commissions would be accepted, as they mostly were, without further criticism, discussion and amendment.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 519 note.

[1346] Smuts to A Clark 23 April 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 125.

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> all sorts of uninteresting subjects. Uninteresting to me, but not to the enemy under the harrow, and there is the rub . . . The Germans will be here in a few days from now and I am very anxious to get through as much of the work as possible before they come.[1347]

This was a disconsolate time for Smuts, as his letters to the Quaker sisters, Alice Clark and Margaret Gillett, bear witness:[1348]

> What is the word to say? For I believe people are waiting for the word . . . Do you remember Shelley's line in the Hellas:
>
> The world is weary of the past;
> O might it die or rest at last
>
> That is a very dangerous spirit - when mankind lies down in weariness and waiting for death. We must make a tremendous appeal to them to rise from the dead.[1349]
>
> Nerves are becoming very ragged, and tears are mingling with curses (literally!). And the gaunt spectre is stalking remorselessly on over the world, while the small puppets occupy the front of the stage.[1350]
>
> If we could have the peace signed and cut ourselves away from this accursed Paris atmosphere, we may become sane again - if it will not be too late.[1351]

[1347] 'I have been very busy . . . So many conferences and interviews, so much reading of papers and reports.' Smuts to MC Gillett 24 April 1919 in *Ibid* 127.

[1348] They, in turn, attempted to offer as much comfort and encouragement as they could: 'I am only full of sympathy with you in these days of blackness . . .' (MC Gillett to Smuts 25 April 1919 in *Ibid* 128); '[Y]ou may apply [the term "mortal mind"] to the small and trivial intellects which are so busy talking around you and patching together treaties and ideas which have no roots in the divine, universal mind, which creates all things that exist. And then these little people are so surprised when the big forces, which have been too big to come within their vision at all, brush aside all their intricate systems of safeguards and send them to destruction . . . Despair seems to be one of the worst enemies of the human soul . . .' (A Clark to Smuts 25 April 1919 in *Ibid* 129 - 130); '[I]f you dwell too much on the practical advantages accruing from a holistic life, you may encourage a materialistic spirit which brings death and corruption. You can, however, assume the holistic instinct to be latent in the ordinary plain Englishman and woman . . .' (A Clark to Smuts 26 April 1919 in *Ibid* 133).

[1349] Smuts to A Clark 24 April 1919 in *Ibid* 126.

[1350] Smuts to MC Gillett 24 April 1919 in *Ibid* 128.

[1351] Smuts to MC Gillett 1 May 1919 in *Ibid* 140. Smuts was not the only member of the British delegation who felt this way. Sir Henry Wilson also exclaimed: 'Heaven give me escape from this Paris nightmare.' Wilson as quoted in MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 568.

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On the very eve of the presentation of the draft treaty to the German delegation, Smuts, like most of his colleagues, did not have a complete copy of all the proposed terms.[1352] 'I don't quite know how things stand now,' he wrote on 1 May. 'I am rather out of touch with them just now,' he continued, 'and have no temptation whatever to obtrude myself on others. The Peace Terms are, I suppose, ready now.'[1353]

However, from what Smuts knew of the terms already - 'and he knew more than most'[1354] - he was disheartened:[1355]

> I am much troubled over our peace terms. I consider them bad. And wrong . . . The world may lapse into complete chaos. And what will emerge? I don't know what to do, as the document will soon be given to the Germans and published; and it may already be too late to do anything. And perhaps I take too tragic a view of these things.[1356]
>
> I am getting more and more uneasy and unhappy over the terms of peace . . . They will leave a trail of anarchy, ruin and bitterness in their wake for another generation. They will outrage the sense of fairness of decent people and in the end will prove the undoing of whatever stable government still

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[1352] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 80. As the various committees completed and submitted their recommendations, they were drafted into the treaty. HC Armstrong *Grey Steel (J.C. Smuts): A study in arrogance* (1937) 237. On Sunday, 4 May, the Council of Four, after dictating a few hurried changes, ordered that the draft treaty should go to the printers. On 6 May, a rare Plenary Session was called to vote on the terms. Since the final version was not yet ready, the delegates had to listen to André Tardieu reading a lengthy summary in French; 'many of the English speakers nodded off.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 459. There was apparently no opportunity for the British delegation to read and discuss the draft terms in full beforehand. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 80 - 81. Sir Henry Wilson, Chief of Imperial General Staff, wrote in his diary: 'So, we are going to hand out terms to the Boches without reading them ourselves first. I don't think in all history this can be matched.' Wilson as quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 459.

[1353] Smuts to MC Gillett 1 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 140.

[1354] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 81.

[1355] Smuts to A Clark 2 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 141.

[1356] Smuts continued: 'I wish I could wrap myself up in some stuff impervious to the troubles of the world, and do my work without the pain of reaction which the world inflicts on those who would improve it. That is badly put, but you see what I mean: a *good* heart in a *thick* skin.' Smuts to A Clark 2 May 1919 in *Ibid* 141 (Smuts' emphasis). Alice Clark responded as follows: 'Your letter was sad. But it was evident from the papers that things have been going badly in Paris . . . The temptation to be unjust to a helpless enemy is too great . . . There has been bad blundering over this business, because England and America had all the making cards, and somehow they have wasted them and are allowing themselves to be dragged at the heals of France . . . All we can know is that the great principles of truth and love and life will endure, whatever now goes into the abyss. The limit to our power for good and love is only the narrowness of our belief. Our want of belief is owing to our ignorance. In reality the universe is wholly at our service. A Clark to Smuts 4 May 1919 *Ibid* 146 - 147.

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> exists in the world. It will be a lost world that we shall have to face. And all through our own unwisdom.[1357]

'I wish fifty percent of this Peace Treaty could be scrapped,' Smuts vented to Margaret Gillett.[1358] This may 'happen yet,' he continued, 'but not till after a stiff fight by the Germans who will receive all the kudos for the peace in consequence. Serves us right.'[1359]

Unless urgent measures were taken, Smuts feared that events would take place in the coming year that would 'shock the conscious of Christendom, if there is any left.'[1360] He was struggling, 'like a midwife, to bring some workable scheme to life,' but it was 'most difficult.'[1361] However, because failure would be 'quite disastrous,'[1362] Smuts contemplated 'another missive' to the Prime Minister, despite his sense that Lloyd George had been avoiding him lately.[1363] Accordingly, on 5 May 1919, Smuts 'urgently'[1364] wrote to Lloyd George.

[1357] Smuts to MC Gillett 2 May 1919 in *Ibid* 142.

[1358] Smuts to MC Gillett 4 May 1919 in *Ibid* 144.

[1359] Smuts to MC Gillett 4 May 1919 in *Ibid* 144. Smuts was much haunted by the reparations provisions of the draft treaty, perhaps because of his own hand in what he now viewed as potentially devastating financial demands on Germany. See Chapter 5 (2) above. 'We may have to scrap our whole reparations scheme,' he wrote to Margaret Gillett, 'as the Americans say it is no use doing anything for Germany when the Powers are crippling and ruining her deliberately through their reparation clauses.' *Ibid*. To Alice Clark, Smuts wrote the same day: 'Last night I had some of our (British) financial representatives together with Americans ditto to dine with me and thereafter we discussed what could be done about reparations and finding credit for Europe to buy food and raw materials.' Smuts to A Clark 4 May 1919 in *Ibid* 145.

[1360] *Ibid*.

[1361] *Ibid*

[1362] *Ibid*.

[1363] Smuts to MC Gillett 4 May 1919 in *Ibid* 144. Smuts tried to assuage his sense of impending doom by engaging in two of his favourite activities: strenuous walks and discussing philosophy. On 4 May he wrote to Alice Clark: 'Yesterday afternoon I felt that I should have a real long walk to get rid of the mental humours which had gathered in me and were distracting the flow of my thoughts. So I had a four hours' real hard walk by myself in the Bois, and this morning I feel rather stiff but otherwise much more at ease and reconciled to fate.' Smuts to A Clark 4 May 1919 in *Ibid* 145. In the same letter Smuts stated, in response to an earlier letter from Alice Clark: '[Y]our holism is very attractive and very true. Life is creative, beneficent, holistic, and our prayer should be "to have life and have it more abundantly." While the material (like water) always tends to run down to the lowest level, Life always tends to rise above itself in ever higher ideals. That is the great mystery, but it is a fact. And another mystery is that Life is creative through the union of the partial into the whole - that is, acts holistically. The individual becomes creative only through with the other or the others; hence birth, social improvement and progress.' Smuts to A Clark 4 May 1919 in *Ibid* 145 - 146.

[1364] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 81. 'There was little in the memorandum for which he had not already pressed on a number of occasions, but now the urgency attached to his proposals was desperate.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 108.

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4. 'This is the time for the Griqua prayer'

In the absence of 'important changes' to the draft treaty, Smuts contended in another letter to Lloyd George on 5 May 1919, the Allies ran 'the very great risk of the German Government refusing to sign it.'[1365] And, for tactical reasons, he 'could not urge on [Lloyd George] too strongly' that these changes be made, if at all possible, before the document was presented to the Germans.[1366] Smuts succinctly enumerated in eight paragraphs[1367] the 'principal points' of the draft treaty which would render it 'difficult, if not impossible, for the German Government to accept.'[1368]

The territorial clauses - specifically the provisions annexing Danzig to Poland, and those providing for the repurchase of the Saar mines - went 'too far,' were 'too drastic,' and 'should be altered.'[1369] The military clauses left Germany an army 'far too small for her requirements.'[1370]

In addition to these 'principal points,' the draft treaty also contained provisions that Smuts and Botha, from their personal experience in other days, referred to as petty 'pin-pricks' - relatively unimportant provisions that were of little to no value, 'but must be

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[1365] Smuts to D Lloyd George 5 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 148. In Smuts' view, these changes could be effected 'without changing [the] structures or main contents' of the document. *Ibid*. However, Hancock argues that, although Smuts' memorandum of 5 May was moderate in tone, in substance it was 'far more drastic than the previous letter of 11 April,' and that the 'cumulative effect of the changes' Smuts proposed 'would have been sweeping.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520.

[1366] Smuts to D Lloyd George 5 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 148. This was a matter of great urgency, for, as Lentin points out, '[l]ess than 48 hours remained before the hand-over.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 81.

[1367] These paragraphs corresponded to the main chapters of the draft treaty. *Ibid*.

[1368] Smuts to D Lloyd George 5 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 148. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 81; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520; SG Millin *General Smuts volume 2* (1936) 231; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 108;

[1369] Smuts to D Lloyd George 5 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 148.

[1370] Smuts objected *eo nomine* to the provisions denying Germany any aircraft and demanding the surrender of all military and naval aircraft, and those calling for the destruction of all aerodromes within 150 km of Germany's eastern, western, and southern frontiers. Again, these provisions went 'too far,' and were 'too drastic.' *Ibid*.

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unnecessarily galling and wounding to the feelings of a defeated enemy.'[1371] These concerned the reparations clauses which were 'too drastic' and would 'cripple Germany;'[1372] the punishment clauses which could not 'honorably be accepted by any Government;'[1373] and international controls to be imposed on Germany's rivers and railways which were 'far too drastic' and 'hopelessly one-sided.'[1374] For each of these 'pin-pricks,' Smuts offered a solution.[1375]

However, 'most shocking of all' to Smuts were the occupation provisions.[1376] To allow France to occupy the left bank of the Rhine for a minimum of 15 years 'under a régime of the most drastic martial law, with an army to which there is no limit and for which Germany has to pay, must shock every decent conscience and breed great perils for Europe.'[1377] The ramifications of these provisions, Smuts warned, were that France could 'move her

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[1371] SG Millin *General Smuts volume 2* (1936) 231. As a 'trifling example' to illustrate the 'humiliations' that the draft treaty imposed, Dr Walter Simons, the German delegation's Chief Administrative Officer and a former judge under the Kaiser, wrote to his wife, 'Germany was required to surrender to the British the skull of the Sultan Kwakwa, a rebel chieftain of what had been German East Africa.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 125.

[1372] Smuts to D Lloyd George 5 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 148.

[1373] *Ibid* 149.

[1374] *Ibid*.

[1375] With regard to the reparations clauses, Smuts proposed the following detailed 'alterations' which would leave the 'main scheme' in tact: '*(a)* The first payment to be extended to end of 1921 instead of April 1921. *(b)* The bond issue to be deleted as it is unworkable. *(c)* The selection of equivalent animals or articles from Germany for those destroyed in devastated areas to be deleted. *(d)* The supply of coal and coal tar products by Germany to be deleted, as surrender of Saar Basin is enough quid pro quo for destruction of French mines. *(e)* Future ship-building by Germany for Allies to be deleted as it is against interests of British industry. *(f)* Supply of dyes to be deleted as detrimental to British industry.' *Ibid* 148 - 149 (Smuts' emphasis). In the punishment clauses, Smuts would leave 'the trial of the Kaiser to stand,' but he would 'entrust the rest of the prosecutions to machinery to be created by the League of Nations.' This would achieve the same end as the current draft provisions, but through 'machinery which has a greater appearance of impartiality.' *Ibid* 149. On the boards which were to control the German rivers, Smuts believed that Powers with no direct interest were too strongly represented, and the German government not strongly enough. Therefore, 'representation on the River Boards' had to be 'very materially altered.' Moreover, the articles relating to railway rates appeared to Smuts to be 'impossible and unworkable.' *Ibid*.

[1376] *Ibid*.

[1377] *Ibid*.

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whole military expenditure on to Germany' for the next 15 years.[1378] Surely this could not stand.[1379]

Smuts concluded his memorandum to the Prime Minister with an appeal to what Smuts and Wilson fervently believed to be the bedrock of international relations: global public opinion. Smuts expressed the hope that, with the 'principal alterations' he suggested, and the removal of the 'many small pin-pricking provisions' that did not serve any useful purpose,[1380] the draft treaty could be salvaged and made a 'reasonable and acceptable document, which the public opinion of the world would approve.'[1381]

The day prior to the presentation of the treaty terms to the German delegation, Smuts also attempted to exert a measure of 'political pressure' upon Lloyd George.[1382] In a letter of 6 May from Botha to Lloyd George - which Smuts had actually drafted[1383] - the South Africans forewarned the Prime Minister that he should not assume to bind the Dominions

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[1378] *Ibid*.

[1379] *Ibid*. As Millin points out, Smuts' 'bogies' at the peace conference were France and Russia. 'When Smuts was not agitating himself about France he was agitating himself about Russia.' SG Millin *General Smuts volume 2* (1936) 209.

[1380] *Ibid* 148.

[1381] *Ibid* 149 - 150.

[1382] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 82.

[1383] See the authors' annotation: 'This letter was drafted by Smuts' in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 150. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 82.

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through the proposed treaty to participation in British military assistance to France against future German aggression.[1384]

However, neither Smuts' memorandum of 5 May, nor his letter under Botha's name of 6 May, bore any fruit.[1385] The draft treaty was rushed into print without any substantive changes for the presentation ceremony on 7 May.[1386] Lentin recounts how Smuts, after a sleepless night, roamed the empty boulevards of Paris during the early morning hours of Wednesday, 7 May, and came upon Herbert Hoover, the American Director-General of Allied Relief.[1387] Hoover described the encounter:[1388]

> Within a few blocks, I met General Smuts and John Maynard Keynes . . . We seemed to have come together through some sort of telepathy. It flashed into all our minds why each was walking about at that time of the morning.

[1384] L Botha to D Lloyd George 6 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 150. The warning, unmistakable as it was, was diplomatically couched: 'If your undertaking is to bind the Dominions . . . I trust you will give us another opportunity to discuss the matter.' *Ibid*. Lentin observes that, although this letter failed in its extant purpose - 'to shift Lloyd George on the German Treaty' - it had monumental constitutional implications: 'If Smuts supposed . . . that this [letter] would deter such a wily operator as Lloyd George, he was much mistaken. The Prime Minister . . . simply amended the guarantee to read that it would not be binding on the Dominions until ratified by them. Constitutionally speaking, it was true that by this side-wind Smuts had obtained a concession of the utmost importance for South Africa: formal recognition that the Dominions were no longer bound by Britain's treaty obligations and were henceforth free to make their own choices as independent states.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 82. On 10 May, Lloyd George sent a letter to Botha in which he stated that he and Balfour had reached agreement with Clemenceau that no Dominion would be bound by any treaty between Great Britain and France until such treaty had been ratified by the Dominium's parliament. D Lloyd George to L Botha 10 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 155. Botha followed up on Lloyd George's assurances with a second letter on 15 May, again based on a draft of Smuts. According to Hancock, '[t]wo sentences of this letter contain a trenchant summary of the advance in the status of the Union achieved during and after the war by Botha and Smuts.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 522. Smuts (under Botha's signature) wrote: 'One result of the perfectly correct exclusion of the Dominions from the obligation which it is proposed to lay upon the British people may well be that in some future Continental war, Great Britain may be at war and one or more of the Dominions may stand out and maintain their neutrality. But that result is inevitable, and flows from the status of independent nationhood of the Dominions.' L Botha to D Lloyd George 15 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 159. Hancock explicates that, '[t]hese two sentences were pregnant for the future of the Commonwealth.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 522.

[1385] *Ibid* 520; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 82.

[1386] *Ibid* 82.

[1387] *Ibid* 82. Hoover, like Smuts, had tirelessly advocated for the lifting of the blockade. *Ibid*.

[1388] As quoted in *Ibid* 82 - 83. MacMillan adds that Hoover recalled, years later, that, '[w]e agreed that the consequences of many parts of the proposed Treaty would ultimately bring destruction.' As quoted in M MacMillan *Paris 1919: Six months that changed the world* (2001) 467.

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Upon returning to the Hôtel Majestic, Smuts composed two letters, very similar in tone and content, to the Quaker sisters. These letters reveal an uncharacteristically resigned, almost dejected,[1389] spirit:[1390]

> I am not enamoured of our so-called peace terms. Sometimes they appear to have been conceived more in a spirit of waging war than of making peace. And yet I have the consolation that they don't much matter really. Behind the petty stage on which we pose and strut and play-act at making history there looms the dark Figure which is quietly moving the pieces of world history. So it has ever been.

Smuts knew from the depths of his being that he could not wait upon the 'dark Figure' to 'move the pieces of world history' while the old Europe was crumbling all around him.[1391] But on that day, at that time, Smuts was at a loss as to what could be done:[1392]

> Poor Keynes often sits with me at night after a good dinner and we rail against the world and the coming flood. And I tell him this is the time for the Griqua prayer (the Lord to come himself and not send his Son, as this is not a time for children).[1393] And then we laugh, and behind the laughter is Hoover's terrible picture of thirty million people who must die unless there is some great intervention. But then again we think things are never really as bad as that; and something will turn up, and the worst will never be.

On the day of handing the defeated foe the Allies' peace terms, Smuts' mind went back - as it so often did during his time in Paris - 'to another May day in 1902 when Peace Terms were handed to the Boers.'[1394] 'And within five short years what has become of them? The Boers were once more ruling the country and the same Boer leaders were the

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[1389] See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520.

[1390] Smuts to A Clark 7 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 151. Similarly, he wrote to Margaret Gillett: 'I often nowadays have the feeling as if some Great Spirit is back of things and quietly moving the pieces of history behind the camouflage of our petty stage.' Smuts to MC Gillett 7 May 1919 *Ibid* 152.

[1391] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 521.

[1392] Smuts to MC Gillett 7 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 152 - 153.

[1393] As Hancock illuminates: 'Throughout his life, if ever the future looked hopeless, Smuts was apt to say that there was nothing for it but the Griqua prayer. He had once heard the story of an old Griqua chief who saw his tribe beset by great dangers and prayed: "Lord, save thy people. Lord, we are lost unless Thou savest us. Lord, this is no work for children. It is not enough this time to send Thy Son. Lord, Thou must come Thyself."' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 521. See also J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 136. Hancock and Van Der Poel explains the genealogy of the Griquas as 'a people of mixed white and Hottentot descent who settled in the region of the Orange River in the late eighteenth century.' WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 153.

[1394] Smuts to MC Gillett 7 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 152.

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Government.'[1395] Smuts expressed the hope that, 'the same great and wise spirit [may] guide us through the dark times ahead of this world.'[1396]

On 'this most beautiful spring day,'[1397] during which he would much rather have gone 'in thin summer dress into the woods and lanes and join the chorus of nature,'[1398] Smuts mordantly wrote to Alice Clark, 'I am going in a frock-coat and top hat to Versailles just now to join in the exhilarating ceremony of handing the [Germans] our terms.'[1399]

At three o'clock on the afternoon of 7 May 1919, Smuts attended the ceremony[1400] of presenting the draft treaty to the Germans at the Trianon Palace Hôtel at Versailles.[1401]

[1395] Smuts to A Clark 7 May 1919 in *Ibid* 151. In similar vain, Smuts pronounced to Margaret Gillett: '[I]n less than five years those terms had been blown to smithereens by fate and only the semblance of the British flag remained as a reminder of the victors' terms. And so it may be again.' *Ibid* 152.

[1396] *Ibid* 151. Later in the same letter he wrote: 'But God is everywhere, according to your creed as well as mine, and maybe He is shaping the new world behind the polluted atmosphere and tenebrous mists of our poor Conference.' *Ibid* 152.

[1397] *Ibid* 151 - 152.

[1398] *Ibid* 151.

[1399] *Ibid*. In his letter of the same day to Margaret Gillett, Smuts wrote: 'I go today in a frock-coat and top hat to join in handing the Germans our so-called Peace Terms.' Smuts to MC Gillett 7 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 152. See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83.

[1400] The ceremony, according to Lentin, was 'stage-managed by the French.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83. Bendiner describes the scene as follows: '[T]he Germans were seated at one end of a rectangle of tables, facing Clemenceau in the middle of what seemed to them the judges' bench. At his right sat Wilson and Lansing, at his left, Lloyd George and Bonar Law. Around the rectangle ranged representatives of the other nations who had emerged on the winning side. In the middle of the tables between the Germans and their judges sat the interpreters.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 123.

[1401] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520. See also J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 136. It was also at the Trianon Palace Hôtel where, less than a year before, the Allied Supreme Council had held its 'anxious meetings . . . to the continuous sound of the throb and thud of the German guns at Château Thierry.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 675. On the day of the handing-over ceremony, '[t]he camouflage, which had given the lakes in the adjoining park the appearance of green meadows in order to mislead the German aeroplanes, had not yet been removed.' *Ibid*.

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After Clemenceau rose and briefly addressed the German delegates,[1402] Count Ulrich von Brockdorff-Rantzau, Foreign Minister and head of the German delegation, 'shocked the conference'[1403] by speaking from his chair,[1404] in an act of apparent discourtesy[1405] that

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[1402] Lloyd George describes Clemenceau's remarks as 'a few short but perfectly courteous sentences' (*Ibid* 676), while to a German observer, Clemenceau spoke in 'anger and disdain' (E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 123). See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520. MacMillan also quotes a German delegate as stating: 'He [Clemenceau] threw out his words as if in concentrated anger and disdain, and . . . from the very outset, for the Germans, made any reply quite futile.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 464

[1403] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520. See also E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 123.

[1404] Lloyd George reported that the Count 'leisurely or nervously unfolded a manuscript document and, after a painful interval of strained silence, proceeded from his seat to read it page by page in a loud, harsh and defiant voice.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 676. Several explanations have been offered for the Count's apparent rudeness. According to Lloyd George, years after the peace conference, one of the German delegates who sat near Brockdorff-Rantzau told him that, '[t]he poor man was so nervous that he was physically incapable of standing up. He made an effort to do so. But he trembled at the knees and could not rise. It was a terrible ordeal for a man who had been given an unaccustomed task . . . he had never faced any audience before and here was a hostile assembly of men who had fought the German's to death . . . The trained speakers before him could not appreciate his predicament and set down to arrogance what was attributable to stage fright' *Ibid* 676 - 677. However, one Dr Stern-Rubarth, who claimed to be a 'friend and biographer of the late Count,' stated in 1938 that the action was 'intentional and deliberate.' *Ibid* 677n citing the *Daily Telegraph* 10 August 1938. Bendiner explains that Brockdorff-Rantzau remained seated because 'he did not wish to seem like a prisoner in the dock who is expected to stand during the sentencing.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 123. Lentin also writes: 'Under the gaze of Representatives of 27 Allied and Associated nations, Brockdorff-Rantzau, stiff and ill-at-ease, felt himself to be in the dock.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83. Lloyd George remarked that Brockdorff-Rantzau's 'appearance of arrogance, was not reflected in the speech itself.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 677. Interestingly, Margaret MacMillan notes: 'Brockdorff-Rantzau, said a witness, "looked ill, drawn and nervous" and was sweating . . . As he left the Trianon Palace Hotel, Brockdorff-Rantzau stood for a moment on the steps and nonchalantly lit a cigarette. Only those close to him noticed that his lips were trembling.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 464.

[1405] According to Lloyd George, this 'unfortunate incident,' gave Allied delegates 'the impression that Brockdorff-Rantzau not only belonged to the Junker class, but had come there to exhibit deliberately their rudest manners . . . It created the worst impression and there was a perceptible hardening in the faces of the Allied representatives present.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 675 - 676. Although this 'first meeting between victor and vanquished offered the latter an excellent opportunity for softening the stern mood that still possessed the Allies without any grovelling inconsistent with the pride of a great people,' '[w]hatever sympathy might have been felt for a valiant enemy, hopelessly vanquished after four and a half years of unsurpassed courage, was completely chilled by this one exhibition of inexcusable boorishness.' *Ibid* 675; 676. 'It added to the difficulties in the way of those [like Smuts] who were anxious to give a tolerant hearing to the German plea for modification of features in the Treaty which savoured of inequity or undue severity.' *Ibid* 676. Lentin confirms that, except for Smuts, 'few others had time for Brockdorff-Rantzau's protestations, however, for his manner alienated sympathy.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83. For example, not unsurprisingly, Tardieu seethed that this 'delirious swine' had come 'draped in brutish insolence.' Tardieu added: 'At least may this true Boche receive our thanks for his shameless frankness which dispels any illusions about the German cause.' Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 124.

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was perceived as an 'insult to the Assembly and its aged President.'[1406] Although Wilson[1407] and Lloyd George[1408] were incensed,[1409] Smuts listened intently to the content of Brockdorff-Rantzau's statement,[1410] which, 'although it contained a protest, was characterised rather by dignity than defiance.'[1411] Smuts discerned Germany's repudiation

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[1406] D Lloyd George *The truth about the peace treaties volume 1* (1938) 676.

[1407] Wilson apparently turned to Lloyd George and exclaimed: 'Isn't it just like them?' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520; D Lloyd George *The truth about the peace treaties volume 1* (1938) 676. Lloyd George wrote that the 'effect on President Wilson's mind was to close it with a snap.' *Ibid*. Bendiner observes that the 'Wilsonian tone of some passages,' could not excuse Brockdorff-Rantzau's actions 'even in the eyes of Wilson himself,' who said to Bonar Law: 'I see it had the same effect on you as on me. You're red in the face.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 124. Wilson said: 'This is the most tactless speech I have ever heard. The Germans are really a stupid people. They always do the wrong thing.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 464

[1408] 'Lloyd George was so angry "he felt he could get up and hit" Brockdorff-Rantzau. He said it made him "more angry than any incident of the war."' Frances Stevenson as cited in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83. Lloyd George apparently remarked: 'It's hard to have won the war and have to listen to this.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 124. MacMillan notes that 'Clemenceau went red with anger. Lloyd George snapped an ivory paper knife in two.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 464. Lloyd George apparently told people after the speech that he understood, for the first time, the hatred the French felt for the Germans.' *Ibid*.

[1409] Macmillan states: 'Although he said much that was conciliatory, the ineptitude of his interpreters, his decision to remain seated and his harsh, rasping voice left an appalling impression.' *Ibid*.

[1410] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 520; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 83. Bendiner notes that Brockdorff-Rantzau 'spoke calmly and precisely, in German, pausing so that each sentence may be translated into French and English as he went along.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 123.

[1411] D Lloyd George *The truth about the peace treaties volume 1* (1938) 677. Colonel House, Wilson's close advisor, also believed that the Count may have been too nervous to stand and that the speech was 'an able one . . . but out of place.' E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 124. Likewise, Sir Henry Wilson also 'thought the Count's speech "quite capable" and one calculated to "shock our frock-coats."' *Ibid*.

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of sole war-guilt,[1412] and, significantly, the acuminate admonition that Wilson's Fourteen Points were binding on vanquished and victor alike, as the legal groundwork for the terms of the treaty.[1413]

Between the time of the presentation ceremony and 30 May, the team of 180 German diplomats and advisors that had come to Paris, submitted more than 300 pages of objections and counterproposals to the terms of the draft treaty.[1414] During this same period, Smuts experienced profound despair [1415] - matched perhaps only by his despair in the immediate aftermath of the Anglo-Boer War. He 'prayed' to be with his Quaker friends

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[1412] 'We know that the might of German arms is broken. We know the force of the hatred that confronts us here, and we have heard the passionate demand that the victors should both make us pay as vanquished and punish us as guilty. We are required to admit that we alone are war-guilty; such an admission on my lips would be a lie . . . During the last fifty years the imperialism of all European states has chronically poisoned the international situation. The policy of retaliation and that of expansion, as well as disregard of the rights of peoples to self-determination, contributed to the disease of Europe, which reached its crisis in the world war . . . Public opinion in all the countries of our adversaries is echoing with the crimes which Germany is alleged to have committed during this war. Here again we are ready to acknowledge wrong has been done . . . We have not come here to . . . disown breaches of international law which have been actually committed . . . I do not wish to answer reproaches with reproaches, but if it is from us that penance is demanded, then the Armistice must not be forgotten . . . The hundreds of thousand of non-combatants who have perished since the 11th of November through the blockade were killed with cold deliberation, after victory had been won and assured to our adversaries. Think of that, when you speak of guilt and atonement.' Brockdorff-Rantzau as quoted in D Lloyd George *The truth about the peace treaties volume 1* (1938) 676 - 679. See also E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 123 - 124.

[1413] ''[T]he Germans clutched the Fourteen Points like a life raft . . .' comments MacMillan. M MacMillan *Paris 1919: Six months that changed the world* (2001) 461. 'Though we stand alone at this Conference, without Allies, and confronted by our numerous adversaries, yet we are not defenceless. You yourselves have brought us an Ally: - Justice, which was guaranteed to us by the agreement relating to the bases of peace. Between the 5th October and the 5th November, 1918, the Allied and Associated Governments abandoned the idea of a peace of violence and inscribed the words "Peace of Justice" on their banner. On 5th October, 1918, the German Government put forward the Principles of the president of the United States of America as a basis of peace, and was informed on 5th November by Mr. Lansing, Secretary of State, that the Allied and Associated Powers had accepted this basis with two specific reservations. President Wilson's Principles therefore became binding on both belligerent parties - upon you as well as upon us . . . the sacred and fundamental rights of all nations are protected by this agreement. The conscience of the world is behind it; no nations will be permitted to violate it with impunity.' Brockdorff-Rantzau as quoted in D Lloyd George *The truth about the peace treaties volume 1* (1938) 679 - 680. See also E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 124. The Count also exalted the League as 'the lofty conception that the most terrible calamity in the history of the world should bring about the greatest advance in human progress,' and he called for 'the portals of the League of Nations' to be 'thrown open to all peoples of good will' lest the 'slain in this war . . . have died in vain.' Brockdorff-Rantzau as quoted in D Lloyd George *The truth about the peace treaties volume 1* (1938) 682. See also E Bendiner *A time for angels: The tragicomic history of the League of Nations* (1975) 124.

[1414] *Ibid*.

[1415] See WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 152. See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 3 - 4, 520 - 521; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 82 - 84.

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in 'Burnam Beeches or anywhere on the hills divine rather than in this stuffy atmosphere of misguided diplomacy.'[1416]

On 14 May he wrote to Margaret Gillett and expressed his sense of discouragement and dejection:[1417]

> [I]nstead of making peace, we make war, and are going to reduce Europe to ruin . . . It is enough to reduce one to great despair. Poor old Europe, the mother of civilization, the glory of the human race! But I must not go on like this. I really have nothing practical to suggest, as the dimensions of the problem are beyond me, perhaps beyond human power.

However, Smuts' 'mood of passivity did not last long.'[1418] 'Urgent warning'[1419] became the commanding theme of everything he said and wrote during the three weeks that the Germans poured forth 'a great volume of ponderous notes embodying their views'[1420] on the draft treaty.

In addressing the Empire Delegation in mid May, Smuts cautioned that, even if the Germans were 'prepared to swallow this Treaty,' he considered its provisions such as 'to make future peace and goodwill in Europe unlikely.'[1421] Fundamentally, in Smuts' view, the treaty will create an international atmosphere 'which will make the beneficent operation of the League of Nations impossible':[1422]

> [T]he fires will be kept burning and the pot be kept boiling until it again boils over, either in a new war, or the breakdown of the European system under the onslaught of social and industrial anarchy . . .

Smuts appealed to his colleagues - 'even at this twelfth hour and even at the risk of our losing some diplomatic credit' - that the draft treaty be purged from its 'most objectionable

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[1416] Smuts to A Clark 7 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 152.

[1417] Smuts to MC Gillett 14 May 1919 in *Ibid* 157.

[1418] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 521. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 84.

[1419] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 521.

[1420] SG Millin *General Smuts volume 2* (1936) 231.

[1421] Smuts as quoted in *Ibid* 230. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 211.

[1422] Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 230.

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features.'[1423] He counselled that they should consider the German objections and counter-proposals 'fairly and sincerely on their merits,' and, where 'they find a good case made out,' to be 'prepared to modify our proposals.'[1424]

5. 'Under this Treaty Europe will know no peace'

'The Peace Treaty is becoming more and more an abomination to me,' Smuts wrote to Margaret Gillett on 14 May 1919.[1425] Even though it may have been too late, Smuts believed that he had 'to deal faithfully' with Lloyd George and Wilson, and that 'even at this twelfth hour,' they may be 'constrained . . . to listen.'[1426] He therefore addressed 'a very frank memorandum'[1427] of warning and appeal to the two statesmen on 14 May.[1428]

Smuts did not mince words. 'The more I have studied the Peace Treaty as a whole, the more I dislike it,'[1429] he opened his appeal to Lloyd George and Wilson for 'drastic revision' of the draft treaty, 'even at the eleventh hour.'[1430] His objections were as much pragmatic as ethical or idealistic.

[1423] Smuts as quoted in *Ibid*. Smuts believed that their task would be 'very difficult' and 'almost humiliating,' because of the 'wrong procedure' that was followed in the dramatic publication and presentation to the Germans' of the draft treaty terms. But these were surely 'minor consideration[s] where so much is at stake for the world . . .' Smuts as quoted in *Ibid* 230 - 231.

[1424] Smuts as quoted in *Ibid* 231. Smuts' suggested course of action would also afford 'those members of the British Empire delegation, who, like himself, had not seen the most important provisions of the draft Treaty until they were settled by the Supreme Council and on the point of being communicated to the world,' the opportunity to express their views. Smuts as quoted in *Ibid*.

[1425] Smuts to MC Gillett 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 157.

[1426] *Ibid* 157.

[1427] *Ibid*.

[1428] Smuts sent identical copies of the letter to each of Lloyd George and Wilson without informing either that he had written to the other. Hancock and van der Poel notes: 'At the foot of the document in the Smuts collection, a typed copy, is a note in pencil as follows: 'Pres. Wilson and Mr. L.G. were not informed that each had a similar letter.' WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 157. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 84.

[1429] Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 157.

[1430] *Ibid* 158.

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'The combined effect of the territorial and reparation clauses,' Smuts argued, was 'to make it practically impossible for Germany to carry out the provisions of the Treaty.'[1431] Add to these the occupation clauses,[1432] and those putting east and west blocks of Germany 'under their historic enemies,'[1433] and the result will be a treaty 'under which Europe will know no peace.'[1434] 'I am grieved beyond words that such should be the result of our statesmanship,' Smuts lamented.[1435]

Smuts beseeched Lloyd George and Wilson to use their 'unrivalled power and influence to make the final Treaty a more moderate and reasonable document.'[1436] It was troublesome, Smuts admitted, to seem to champion the German case in Paris, where the havoc wreaked on 'devastated France' was so tangible.[1437] However, he expressed the fervent hope that the two world leaders would resist the 'temptation to waive aside' those objections and proposals by Germany that were 'supported by the good sense and conscience of most moderate people.'[1438]

[1431] *Ibid* 157 - 158. See also SG Millin *General Smuts volume 2* (1936) 231 - 232; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 280;

[1432] According to Smuts, the occupation provisions 'planted' the French 'on the Rhine indefinitely, even beyond the already far too long period of fifteen years, under an undefined regime of martial law.' Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 158.

[1433] With 'historic enemies' Smuts meant Poland and France. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 84.

[1434] Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 158.

[1435] Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 158. See also M MacMillan *Paris 1919: Six months that changed the world* (2001) 469. Moreover, the military guarantee to come to France's aid in the event of another European conflagration, 'may at any time bring the British Empire also into the fire.' Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 158. Smuts likely included the reference to Great Britain's military guarantee to France, because, as Hancock suggests, Smuts hoped that his letters (under Botha's signature) to Lloyd George of 12 and 15 May, in which he made clear that Great Britain should no longer count on South African support, would give 'extra weight' to the instant letter of May 14. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 522.

[1436] Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 158.

[1437] *Ibid*. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 85.

[1438] Smuts to D Lloyd George and Woodrow Wilson 14 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 158.

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Smuts closed with a moral supplication:[1439]

> . . . Democracy is looking to you who have killed Prussianism; the silent masses who have suffered mutely appeal to you to save them from the fate to which Europe seems now to be lapsing. Forgive my importunity; but I feel the dreadful burden resting on you, and write from motives of pure sympathy.

Two days later, on 16 May, Smuts received a reply from Wilson that showed the president to be 'most unreceptive of criticism.'[1440] Wilson cordially assured Smuts that 'no apology was needed' for his 'earnest letter of the fourteenth.'[1441] He acknowledged that 'the Treaty is undoubtedly very severe indeed,' and he assured Smuts that he would give 'real consideration' to the German objections.[1442] However, that is as far as Wilson was prepared to go:[1443]

> I do not think that it [the draft treaty] is on the whole unjust under the circumstances . . . I feel the terrible responsibility for this whole business, but inevitably my thought goes back to the very great offense against civilization which the German State committed, and the necessity for making it evident once for all that such things can lead only to the most severe punishment.

Although in later years - after time and distance had healed the wounds of Paris - Smuts defended Wilson's reputation against detractors, 'at the time he found his arid and unctuous letter utterly disillusioning.'[1444]

'I fear the Prime Minister is definitely against me now,' Smuts wrote to his Quaker friends, 'and I get no support from Wilson. I do not even know if he really agrees with

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[1439] *Ibid*. See also SG Millin *General Smuts volume 2* (1936) 232; D Wilson *Smuts of South Africa* (1946) 88.

[1440] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 523. Lentin writes that, 'neither Lloyd George nor Wilson was in a mood to listen.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 85. Millin comments that Wilson answered Smuts 'according to the feelings with which he had come to Europe and with which he returned to America - his persistent conviction.' SG Millin *General Smuts volume 2* (1936) 232.

[1441] W Wilson to Smuts 16 May 1919 in in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 160.

[1442] *Ibid*.

[1443] *Ibid*. Wilson seemed 'superficially receptive,' comments Lentin, but the president 'had dug in his heels.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 85. See also K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 109.

[1444] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 523.

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me.'[1445] Smuts cut to the core of their conflicting visions for the peace: 'He thinks the Germans deserve a hard peace. I think the world deserves a good peace.'[1446]

Perhaps because Smuts was aware of the profound impact his pamphlet on the League had on Wilson, and that 'Wilson thought more of [his] opinion than of that of any other person on the British Delegation,'[1447] Smuts made a 'personal request' to see the president 'at an early date' to raise with him 'some matters of considerable urgency.'[1448] Wilson deputised Colonel House, 'who [was] in Wilson's confidence'[1449] to confer with Smuts. Regarding his meeting with House, Smuts reported:[1450]

> I had a long and very earnest talk with Colonel House . . . I pointed out how far we were now from the great spirit of 1914, and of Wilson's speeches, how disillusion is settling on the world and becoming the main cause of political and moral anarchy . . . I told him the world was looking to Wilson who must not fail in this great moment.

[1445] Smuts to A Clark 16 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 166.

[1446] Smuts to A Clark 16 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 166.

[1447] Smuts to MC Gillett 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 171.

[1448] Smuts as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 85.

[1449] Smuts to MC Gillett 18 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 167.

[1450] *Ibid* 167.

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Although, according to Smuts, House fully agreed with him,[1451] Smuts' 'own attempts to get Wilson's support have so far failed.'[1452] Lloyd George, too, was 'at present most elusive,' and Smuts feared that 'little was to be expected from him.'[1453]

Five days after his letter to Lloyd George and Wilson, Smuts learned that the Prime Minister was 'very angry' with him.[1454] 'Wilson is also failing me,' he told Margaret Gillett.[1455] He was 'not really a great man, and Clemenceau has proved too strong both for

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[1451] Although Smuts did not succeed in convincing Wilson or Lloyd George, his views did garner 'considerable support' among other members of the British and American delegations 'to whom he circulated copies of his letters.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 87. He wrote to Alice Clark on 18 May that 'Colonel House, Milner and Barnes really agree with me,' but that they would 'take no action' and were 'in doubt what action [was] possible.' Smuts to A Clark 18 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 166. On 19 May he told Margaret Gillett: 'Many Americans are on my side, but of course they are smaller fry and are afraid of Wilson. They tell me very bitter things of him.' Smuts to MC Gillett 19 May 1919 in *Ibid* 171. On that same day, Smuts received a letter marked 'Confidential and Unofficial' from JW Headlam-Morley, in which the Assistant-Director of the Political Intelligence Department stated: 'I have just been reading with very great interest your memorandum on the negotiations of the Peace Treaty. I hope you will allow me to say how glad I am that someone has said what many are thinking. I feel myself, and I know that there are many who agree with me, that the Treaty in its present form is indefensible and cannot in fact be carried out.' JW Headlam-Morley to Smuts 19 May 1919 in *Ibid* 168 - 169. The 'memorandum' Headlam-Morley referred to is presumably one Smuts circulated among the British Empire Delegation. In a private document is Smuts' handwriting, under the heading 'Peace Negotiations,' he writes, next to the date 17 May: 'Wrote WCP 799 for B.E.D. [British Empire Delegation] Saw Barnes who agrees. Saw Milner who agrees. Saw Churchill who thinks good policy to meet Germany.' *Ibid* 165. On 23 May Smuts wrote to Alice Clark: 'I have been working up the American against the Peace Treaty and in favour of important alterations in the document. Some of them feel very bitter about Wilson who has proved so much weaker and more disappointing than they had, or could have, expected. But mostly they blame Lloyd George and the British Delegation for continuously supporting the French in their unreasonable demands. Hoover especially is deeply disappointed, and he is quite the best and most efficient man in the American Delegation. I have spoken very seriously both to Balfour and the Prime Minister . . .' Smuts to A Clark 23 May 1919 *Ibid* 190. After a small celebratory dinner hosted by Botha in honour of Smuts' 49th birthday, Smuts got Hoover to his room 'for a talk.' Hoover told Smuts that Smuts' efforts were 'beginning to bear fruit and that he sees a change of spirit about.' Smuts, however, warned Hoover that he still felt 'deeply concerned, and that the "big ones" may fail us and the world, and that a terrible responsibility will then devolve on us' Smuts to MC Gillet 24 May 1919 in *Ibid* 194.

[1452] Smuts to MC Gillett 18 May 1919 in *Ibid* 167.

[1453] *Ibid*. Ingham notes: 'On more than one occasion Smuts had told his friends that the prime minister relied heavily upon his advice, and that had been true when Smuts was carrying out Lloyd George's wishes. But now the views he so strongly advocated were at odds with Lloyd George's promises to the electorate and Smuts sensed that the prime minister was no longer susceptible to his persuasions.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 109.

[1454] Smuts to MC Gillett 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 171. See also D Wilson *Smuts of South Africa* (1946) 88.

[1455] Smuts to MC Gillett 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 171. Smuts also believed Wilson was 'avoiding him.' *Ibid*.

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him and our mercurial, tricky Prime Minister.'[1456] 'He [Wilson] has failed Democracy - the man who was to make the world safe for democracy,' Smuts said shortly before his return to South Africa.[1457] To his wife, Smuts confided his 'bitter disappointment' in the 'big men,' who had been 'smitten with blindness'[1458]:[1459]

> [B]oth Wilson and Lloyd George . . . are smaller men than I should ever have thought. But one only judges a man properly in a great crisis, and I must say that these two are, in my opinion, being found but weak and light in the great balance.

Having been rebuffed by Lloyd George and Wilson, Smuts became exceedingly dejected, and he 'keenly felt his impotence and isolation.'[1460] 'It is not a pleasant feeling to stand alone,' Smuts wrote to his wife, 'and you will understand how much I long for my dear ones in such dark days.'[1461]

[1456] *Ibid*. See also P Beukes *The holistic Smuts* (1989) 177. Joseph comments that Smuts' 'voice was muffled by the surging tide. Even Wilson, the idealist, had been caught up in the rapid movement of events . . .' J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 136.

[1457] Smuts to A Clark 10 July 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 263.

[1458] Smuts to SM Smuts 20 May 1919 (translation) in *Ibid* 176. Smuts expressed his bitterness as follows: 'Germany is being treated as we would not treat a K —— [term deeply insulting to, and derogatory of, Africans] nation. I have already protested against this, and I shall, if necessary, go further in my resistance.' Smuts to *Ibid*.

[1459] *Ibid* 176. 'Through the alembic of his dynamic mind had passed the awful consequences of a bad peace,' writes Crafford, '[h]e felt that he was dealing with blind fools.' FS Crafford *Jan Smuts: A biography* (1946) 175. Crafford continues: 'While the vast majority of the delegates were worn out physically and mentally even before they arrived in Paris for the conference, Smuts was fit and vigorous. His mind was as fresh and clear as it had been at the end of 1917 when Colonel House noticed that "Smuts was the only one among the governing statesmen who did not seem tired." "What a man!" wrote a colleague in April 1919. "His sense of values takes one away from Paris and this greedy turmoil."' *Ibid*.

[1460] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 86. To Alice Clark Smuts wrote how 'isolated' he was at that moment. Smuts to A Clark 18 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 166. 'And one feels lonely and impotent while all the great ones wrap themselves in their delusions,' he confident in Alice's sister. Smuts to MC Gillett 19 May 1919 in *Ibid* 171. However, even at his darkest hour, Smuts was never without hope. Immediately after saying to Alice Clark that he was 'isolated,' he followed with: 'And yet not isolated. For they are never alone who labour for the good. They are accompanied by the aspirations of all the good souls; they are borne forward on the sighs and prayers of those who long for better things . . .' Smuts to A Clark 18 May 1919 in *Ibid* 166. And, immediately after professing to Margaret Gillet that he feels 'lonely and impotent,' Smuts stated: 'And yet one is not really alone; he who struggles for the Right is silently accompanied by the sighs and the tears and the aspirations of the great generations. And is there not the whole?' Smuts to MC Gillett 19 May 1919 in *Ibid* 171 - 172.

[1461] Smuts to SM Smuts 20 May 1919 (translation) in *Ibid* 177.

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Smuts referred to the draft treaty as, among other things, 'the accursed Porcupine!;'[1462] 'the *Thing*;' 'the dreadful Thing;'[1463] a 'wreck,'[1464] a 'monstrous instrument;'[1465] a 'rotten thing';[1466] a 'death sentence on Europe;' [1467] a 'bad and dangerous piece of work, largely borne of fear and revenge,' that showed 'little sign' of his work;[1468] 'worse than the Treaty of Vienna, and a terrible outcome of all our professions;'[1469] 'not a work of brass but of sand;'[1470] a 'tin of poison gas which must asphyxiate the League of Nations;'[1471] a 'blot on our human record;'[1472] and 'a terrible document - not a peace treaty, but a war treaty.'[1473]

[1462] Smuts to MC Gillett 18 May 1919 in *Ibid* 167. On 16 May, Smuts wrote to Margaret Gillett: 'I am still looking at that Porcupine of mine, I mean the Peace Treaty, and considering what to do with the damned thing. You can see it is not improving my temper. Nor apparently does my temper affect it sensibly. So something else will have to be done, but just exactly what?' Smuts to MC Gillett 16 May 1919 in *Ibid* 163. With regard to Wilson's letter to Smuts of 16 May, and Smuts referring to the draft treaty as 'that Porcupine of mine,' Hancock observes that: 'Smuts, in his different idiom, could be just as unctuous, though never as arid, as Wilson; but he usually had some salt of humour and the saving grace of doubting his own infallibility.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 523.

[1463] Smuts to MC Gillett 30 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 205.

[1464] Smuts to A Clark 18 May 1919 in *Ibid* 166.

[1465] Smuts to JM Keynes 10 June 1919 in *Ibid* 223.

[1466] *Ibid*.

[1467] Smuts to SM Smuts 10 June 1919 in *Ibid* 225. In concluding his letter, Smuts referred to the peace as the 'cell of war and unrest in future.' Smuts to SM Smuts 10 June 1919 in *Ibid* 226.

[1468] Smuts to H Gillett 20 May 1919 as cited in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 86.

[1469] Smuts' comment to Cecil on 18 May 1919 as cited in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 86.

[1470] Smuts to MC Gillett 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 171.

[1471] '. . . and all other benevolent aspirations for the improvement of the human lot.' *Ibid*.

[1472] Smuts to MC Gillett 20 May 1919 in *Ibid* 180.

[1473] Smuts to SM Smuts 20 May 1919 (translation) in *Ibid* 176.

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The Peace Conference had become 'a tragedy of almost infinite dimensions, the poignancy is often more than one can bear;'[1474] a 'ghastly tragedy;'[1475] and a 'reactionary Peace - the most reactionary since Scipio Africanus dealt with Carthage.'[1476]

Smuts' disconsolation found eloquent expression in a letter to Alice Clark on 16 May, the day he received the reply from Wilson:[1477]

> For the world is very dark. I sometimes feel as if the lights of the ideal are one after the other going out, and a darkness of despair is gathering round this world. I sometimes have the feeling as if I am slowly, inevitably, sinking into a pit. One's tongue is tied, one's heart is seized by a cold horror of what may yet happen. For believe me things *must* either get better or they will get *far* worse . . . defeat here - where so much is at stake - would be too bitter. But as I say, all the ways are dark, all the oracles are dumb, and one sees no clear line of wisdom and duty . . . I am thinking deeply but one does become very impatient of thought and stretches out the limbs in longing for action.[1478]

[1474] [1474] Smuts to MC Gillett 16 May 1919 in *Ibid* 162. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 86.

[1475] Smuts to MC Gillett 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 171.

[1476] In 202 BC, after the Second Punic War. *Ibid*. 'Ironically, notes Lentin, 'the peace dictated by Scipio in 202 BC after the second Punic War was in fact remarkably lenient. It was in 146 BC after the Third Punic War that the Romans imposed the true "Carthaginian Peace:" they destroyed the city of Carthage, slaughtered or enslaved its inhabitants and reputedly sowed the ground with salt so that nothing should grow there.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 119.

[1477] Smuts to A Clark 16 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 161 (Smuts' emphasis).

[1478] This letter was in response to a letter from Alice Clark on 15 May in which she stated: 'I am glad to hear that you are dealing plainly with Wilson and George; for what goes wrong now those two men have complete personal responsibility . . . People are not really interested in the terms of peace. They do not understand the details, and will accept whatever Lloyd George tells them is fair and right. Therefore, he has no excuse. And as for being bound by his past promises, his career is one long record of breaking them and I do not see why he should begin to be so particular . . . the English people are not filled with a passion for vengeance. They do not find it interesting to trample on a beaten enemy. Be very sure that Lloyd George's action is the result of hid own weakness, if he goes wrong; he is not helpless before the blind passion of the multitude . . . I do not think at the present time you will find any people in this country . . . who want to starve the Germans or demoralize them . . . A Clark to Smuts 15 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 159 - 160. Smuts said to Alice Clark: 'Your wise letter has . . . consoled me at a time when one seeks for consolation. Smuts to A Clark 16 May 1919 in *Ibid* 161. Smuts often discussed matters of spirituality and Holism with Alice Clark: 'I always hold that you come most into direct contact with the Divine in the moments of great isolation and loneliness . . . but holier still is that place where the lonely, wounded spirit clasps the Divine Spirit, and Holism is consummated.' Smuts to A Clark 16 May 1919 in *Ibid* 162.

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To his wife, Smuts contrasted his sorrowful spirit with the jubilance of nature: 'Paris is very beautiful in spring; everything green and in bloom. The weather is lovely. Only within one feels sore and melancholy because of the state of this great world.'[1479]

Smuts' Quaker friends offered their unwavering loyalty and encouragement in his 'present sense of defeat' for his 'lonely struggle for peace and righteousness':[1480]

> You have been asserting the power of truth and human love and honesty against that mass of selfishness and falsehood and for the moment the proud water have gone over your soul. But you have life on your side, whereas they have corruption and death in their very nature.[1481]

At least there was the League of Nations that he had 'done so much to shape,' Alice Clark reminded him, that would be the goal toward which humanity's 'efforts will be directed for many years to come,' and that would be a 'haven after many storms.'[1482] Nevertheless, Smuts' 'herculean self-confidence'[1483] seemed to have abandoned him, and he became irresolute, at least temporarily:[1484]

> [T]he road is all very obscure to me and hence arises a certain timidity and fear that I may not be right. I wish I saw more clearly, then I would act more resolutely. However, I shall grope along.

[1479] Smuts to SM Smuts 20 May 1919 (translation) in *Ibid* 177.

[1480] A Clark to Smuts 18 May 1919 in *Ibid* 164. He was living proof, Alice Clark reminded him that 'personal defeat does not always mean the defeat of a cause for which you fought. When the outward fight is ended . . . the mental fight continues and there the victory is always to patience, truthfulness and love.' *Ibid*. 'At Vereeniging you laid down the weapons and continued the struggle in the field of diplomacy. This time the sword and gun were successful, but the wrestle with spiritual wickedness has been in the high places at Paris and you appear to have lost once more, but there, too, the weapons have been carnal - materialism has been pitting force against force.' *Ibid*.

[1481] In a later letter, Alice Clark describes the other delegates at the Peace Conference as a 'lot of narrow-minded men' who were 'like brushwood which is swept along by a swelling stream. They stick in a bend and the course is choked for a time. But soon the waters gather force and sweep the obstruction before them . . .' *Ibid*. '[Y]ou will be listened to. Your thinking will bear fruit,' Alice advised, 'but you must express it to the real living human forces and not only to the dry reeds.' A Clark to Smuts 18 May 1919 in *Ibid* 164.

[1482] *Ibid* 164 - 165.

[1483] Alan Paton referred to this self-confidence in great men as the 'self-confidence of maturity to a sublime degree.' As quoted in P Beukes *The holistic Smuts* (1989) 37. Beaks notes: 'If there was a flaw in his character it was probably that he was too sure of himself. He had that unwavering faith in the rightness of his cause and his mastery of events.' P Beukes *The holistic Smuts* (1989) 37.

[1484] Smuts to A Clark 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 168.

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However, Smuts soon regained his resolve, and intensified his lone attack on the draft treaty.[1485] He wrote to Margaret Gillett on 18 May: 'I shall go on with my small efforts, for surely God is behind all good, and one never knows when or where a small displacement may precipitate a great mass.'[1486] 'I don't mean to give in so easily,' he stated on 19 May, 'and have fired off some shots which I hope will hit somebody hard.'[1487]

On 20 May he declared: 'I must not accept defeat at this point without a real struggle. I am now moving all I can to have the thing altered. Not hopefully, but who knows?'[1488] The ultimate objective of his opposition to the draft treaty was to 'build up a peace of understanding and human fellowship.'[1489]

Smuts learned that his views were causing 'some perturbation,'[1490] presumably among Lloyd George and other leading figures in the British Empire Delegation. Accordingly Smuts was 'invited to dine with A.J. Balfour in order to discuss matters' on 20 May.[1491] He found Balfour to be woefully ignorant of the terms of the draft treaty.[1492]

On 22 May, Smuts visited with the Prime Minister upon the latter's request. After speaking to Lloyd George 'very seriously,'[1493] the Prime Minister asked Smuts to prepare yet another memorandum of Smuts 'difficulties' with the terms of the draft treaty.[1494] This

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[1485] Lentin comments: 'With no resource but his own conscience and the passionate strength of his convictions, he agonized as to what he should do. He soon made up his mind. He would carry on the fight.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 87; SG Millin *General Smuts volume 2* (1936) 235.

[1486] Smuts to MC Gillett 18 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 167.

[1487] Smuts to MC Gillett 19 May 1919 in *Ibid* 171.

[1488] Smuts to MC Gillett 20 May 1919 in *Ibid* 180.

[1489] Smuts to H Gillett 20 May 1919 as cited A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 88.

[1490] Smuts to MC Gillett 22 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 182.

[1491] *Ibid*.

[1492] 'I stated to him some of my principal objections to the Treaty. He appeared much puzzled and asked me whether *that* was in the Treaty! Poor innocent soul, he disclaimed all responsibility although I reminded him that he was Foreign Secretary and really responsible in the eye of the Constitution.' *Ibid* (Smuts' emphasis).

[1493] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 88.

[1494] Smuts to MC Gillett 22 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 182.

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Smuts did that very afternoon.[1495] Whatever came of Smuts' efforts, at least now Lloyd George would not be in any position to say that Smuts did not 'most solemnly warn him' of the perils of the draft treaty terms.[1496]

6. 'The final sanction of this great instrument must be the approval of mankind'

In a memorandum to Lloyd George on 22 May 1919, under the heading, 'Procedure for Alterations,'[1497] as Lentin notes, 'Smuts . . . put his finger on the Treaty's most basic and in retrospect most glaring flaw.'[1498] A *Diktat* - treaty terms unilaterally prescribed by the Allies[1499] - would be utterly nugatory, as it would lack any moral authority:[1500]

> I am very anxious, not only that the Germans should sign a fair and good Peace Treaty, but also that, for the sake of the future, they should not merely be made to sign at the point of the bayonet . . . The Treaty should not be capable of moral repudiation by the German people . . .

In order to achieve an equitable treaty that was tolerable to the German people, it was crucial for the Allied and Associated Powers to 'carry the German delegates' with them.[1501] And, in order to do that, it was 'necessary to meet them in oral discussion.'[1502]

Smuts 'set the greatest store'[1503] upon the peace conference evolving, as was the historical precedent, into a congress at which the belligerents met in face-to-face

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[1495] With regard to this memorandum he prepared for Lloyd George, Smuts commented: 'I hope he will read it, for it summarises what I consider the fatal flaws in this Treaty, and suggests a procedure of conference with the Germans by which the amendments could be brought about.' *Ibid*.

[1496] 'I don't know what will come of all this, but at any rate hereafter he will not be able to say I did not most solemnly warn him. This, however, is the last warning, and if I am not listened to this time, I shall wait till the end and then appeal from a different tribunal.' *Ibid*.

[1497] *Ibid*.

[1498] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 88.

[1499] *Ibid*.

[1500] Smuts to D Lloyd George 22 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 188.

[1501] *Ibid*. Smuts stated: '[W]e should listen to what they have to say . . . we should give all necessary explanations to them, and . . . where our clauses appear really untenable, we should be prepared to accept alterations or compromises.' *Ibid* 188 - 189.

[1502] *Ibid* 189.

[1503] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 525.

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negotiations.[1504] This was the *sine qua non* for the peace treaty, the moral authority of which would be beyond reproach, not only by the enemy, but also the public opinion of the world. Only by 'listening to and considering the German case,' could the Allies hope to remove 'from the making of the peace all appearance of one-sidedness and unnecessary dictation.'[1505] Moreover:[1506]

> The moral authority of the Treaty will be all the greater and more binding on that account. And not only the enemy, but the public opinion of the world, will accept it more readily as an honourable ending of the most awful and most tragic dispute in history.[1507]

Smuts ended his memorandum to Lloyd George with a pointed reminder: 'The final sanction of this great instrument must be the approval of mankind.'[1508]

Smuts' plea for bringing the Germans into the discussion was raised again by Botha[1509] on the evening of 24 May, Smuts' 49th birthday, at a 'little dinner in [Smuts'] honour to which General Botha invited the Prime Minister, Milner, Hoover and some other stalwarts.'[1510] Smuts had already proposed negotiating with the German delegation to Cecil, who recorded: 'I sympathized warmly.'[1511] However, Lloyd George 'seemed averse to any such plan, saying that it would be very dangerous.'[1512] As Hancock emphatically

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[1504] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 88.

[1505] Smuts to D Lloyd George 22 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 189.

[1506] *Ibid*.

[1507] Lentin concludes that, '[f]ew more obvious or sensible comments have been made on the Paris Peace Conference.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 89.

[1508] Smuts to D Lloyd George 22 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 189.

[1509] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 89.

[1510] Smuts to MC Gillet 24 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 194.

[1511] Cecil as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 89. 'Cecil noted that 'there was some suggestion of discussing things unofficially with the Germans.' Cecil as quoted in *Ibid*.

[1512] Cecil as quoted in *Ibid*. Lentin states that Lloyd George 'expressly ruled out negotiations with the Germans.' *Ibid*.

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states: '[T]he Big Four would not contemplate in any shape or form the idea of oral discussion with the Germans.'[1513]

Whatever the terms of the final treaty, Smuts remarked ruefully to Alice Clark, '[t]he Peace Conference had been a great failure.'[1514] Petty greed and vengeance had triumphed over idealism, and for Smuts, that was perhaps the greatest calamity:[1515]

> The spirit has been very bad. I had thought that American and British idealism and faith in the world would have won the day against the bitterness and despair which have gone to the soul of France. But it has been otherwise, and nothing now could alter or undo the baneful effect of our four months' work.

Smuts may not have been certain that his efforts to amend the draft treaty would ultimately be effectual, but he had absolutely no doubt that the victors in Paris 'were sowing the dragon's teeth.'[1516] Smuts was taking the long view,[1517] and what he saw beyond the niggling squabbles of the peace conference, filled him with dread:[1518]

[1513] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 526. As Lentin explains: 'All these months the Allies had been engaged in the torturous business of reaching agreement, not with the enemy, but among themselves . . . Negotiation between the Allies had been bad enough. Four long months the Conference had dragged itself out in continuous argument over the contentious issues - and all the main issues were necessarily contentious. More than once the Conference had come close to breakdown. The Italians quitted Paris and returned to Rome for two weeks of protest. The Japanese threatened to leave. Wilson himself had prepared to return home. Clemenceau had stalked out of a meeting with Wilson, and Wilson had intervened physically when a furious Lloyd George and Clemenceau flew at each other's throats. Lloyd George had told Wilson that unless his pledges on reparations were met in full, "I might as well go home." The resulting document was a patchwork quilt of unhappy compromises, reached only after interminable discussion and heart-searching. Only by dint of patience, persuasion and perseverance was agreement reached at all. In these circumstances, the Big Three no longer contemplated talking to the Germans. It would have meant revisiting decisions hammered out after weeks, sometimes months, of wrangling. Renegotiation would have torn the Treaty apart.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 88 - 90 (Internal references omitted).

[1514] Smuts to A Clark 23 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 190.

[1515] *Ibid*.

[1516] Smuts to MC Gillett 25 May 1919 in *Ibid* 195.

[1517] Lentin concludes that 'Smuts's objections were wise, far-sighted and accurate.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 90.

[1518] 'Through the alembic of his dynamic mind had passed the awful consequences of a bad peace,' writes Crafford. FS Crafford *Jan Smuts: A biography* (1946) 175.

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> I see dark days ahead; the sufferings, already so great in Europe, will become greater, and when ultimately we realize it all a cry of horror will go up to Heaven. But it will be too late to meet the crisis . . . What must or could happen to such a world?[1519]
>
> [S]o far we have, I fear, only seen the vanguard of calamity, and the main hosts will in due course move into the battle area.[1520]
>
> I am now waiting for the end when we shall reap what we have sown. We are heading for a great moral defeat, and victor and vanquished will both be bitterly disappointed when all is over.[1521]
>
> I *am* concerned over . . . the thick crop of calamity which I see sprouting up from this Peace, and the world our children will live in.[1522]

Smuts had become increasingly troublesome to Lloyd George.[1523] His 'never-ending protests . . . annoyed the fiery Celt.'[1524] Towards the end of May, the crescive agitation between the two men had reached 'breaking point,'[1525] and their relationship was 'at a nadir.'[1526]

Having rebuffed Lloyd George's invitation to serve on the Austrian reparations commission, Smuts sensed that yet another of the Prime Minister's schemes might be afoot.[1527] On 28 May, the day before the German delegation submitted its observations

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[1519] Smuts to A Clark 23 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 191. 'I shall be far away in South Africa, breeding cattle on my ranch and watering my orange trees.' And God's great mercy will, I pray, be poured out over the suffering peoples.' *Ibid* 190 - 191.

[1520] Smuts to MC Gillett 25 May 1919 in *Ibid* 195. Smuts apologised for 'once more getting off the rails, and plaguing you with my own bitter reflections and self-reproaches.' *Ibid*.

[1521] Smuts to SM Smuts 27 May 1919 (translation) in *Ibid* 201. To his wife Smuts expressed concern that his last two letters (those of 20 May; see *Ibid* 176 - 177, 178 - 179) may have been 'painful' to her. Perhaps, 'in dejection,' he 'exaggerated somewhat.' But the draft treaty filled him with 'such despair and repugnance' that he sometimes became 'really furious with the leaders who have made such a hash of the work here . . .' *Ibid*.

[1522] Smuts to MC Gillett 30 May 1919 in *Ibid* 205. He did not want his friends to think that he was 'morbidly' considering his own position. 'That is too trifling.' *Ibid*.

[1523] 'Smuts had become a thorn in his [Lloyd George's] side.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 90.

[1524] FS Crafford *Jan Smuts: A biography* (1946) 174. 'He wearied Wilson and Lloyd George with his importunity and made the latter angry.' D Wilson *Smuts of South Africa* (1946) 88.

[1525] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 526.

[1526] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 90.

[1527] Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 207. See also FS Crafford *Jan Smuts: A biography* (1946) 174; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 92.

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and counter-proposals to the draft treaty, Smuts received a 'mysterious message' from Lloyd George,[1528] via Philip Kerr and Ernest Lane.[1529] Kerr apparently assured Lane that the Prime Minister thought 'a great deal' about Smuts' views, but 'could not explain at present.'[1530] Smuts aired his suspicions to Margaret Gillet:[1531]

> I believe . . . he is trying to deceive one or other of the opposing parties, and is at present unwilling to show his hand. There may be a great volte face and there may not. I am taking ordinary precautions against being the victim.

Smuts was not about to be hoodwinked by Lloyd George:[1532]

> The Prime Minister wants to ride to heaven on the back of the devil, and he hails me by the way: 'My dear General, you get hold of the tail of this fellow, and he will carry us a good way. If we come across Christian walking *another* way to heaven, we can let go and join Christian's company!' I fear Christian will not be met on that road at all.

The delivery of the German delegation's final memorandum of 'Observations' on, and counter-proposals to, the draft treaty[1533] on 29 May - the deadline laid down by the Allies[1534] - filled Smuts with anticipation. 'I wonder what line the Germans are going to

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[1528] *Ibid*.

[1529] Lloyd George's and Smuts' private secretaries, respectively.

[1530] Smuts to MC Gillett 28 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 203. 'Smuts was sceptical, suspecting that Lloyd George was playing a double game . . .' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 92.

[1531] Smuts to MC Gillett 28 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 203.

[1532] *Ibid* (Smuts' emphasis). See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 92 ('. . . he [Smuts] declined to be his [Lloyd George's] dupe.'); WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 527 ('Smuts was not in the mood to let himself be wheeled by Lloyd George.')

[1533] For a useful summary of the German 'Observations' and counter-proposals, see A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 93, 95.

[1534] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 93.

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take in their document?'[1535] he asked rhetorically as he awaited the English translation of the 'German Note.'[1536]

Upon 'very carefully'[1537] studying the 'portentous document - quite the size of our own prodigious Peace Treaty,'[1538] Smuts was profoundly impressed: 'It is a most powerful statement of the German case, and when published, will influence public opinion very much against our exorbitant terms. In parts I consider it unanswerable.'[1539]

In February of 1919, as the Allied and Associated Powers' work in Paris got underway, Friedrich Ebert, the first president of the German Republic, pronounced: 'In reliance upon President Wilson's Fourteen Points Germany laid down her arms. Now give us the Wilson peace to which we have a claim.'[1540] A '*Wilson peace'* - the phrase that came to haunt Smuts[1541] - now was raised 'to the very forefront' of the German reply:[1542]

> [W]e are bound by the correspondence of last October and November to make a Wilson Peace - that is, one within the four corners of the Wilson Points and speeches. This was a solemn international engagement which we must keep.

[1535] Smuts to MC Gillett 30 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 205. Smuts continued: 'If they take a really big line, we may still see a great change come over the scene. And in the utter darkness God may suddenly stand forth in a blaze of light. But I fear, I much fear, they will prove as unequal to the situation as ourselves.' *Ibid*.

[1536] *Ibid* 204.

[1537] Smuts as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 95.

[1538] Smuts to A Clark 30 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 207.

[1539] *Ibid*. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 95.

[1540] Ebert as quoted in *Ibid*.

[1541] Smuts said that he had always considered this concept 'vital.' Smuts to A Clark 30 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 207. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 95.

[1542] Smuts to A Clark 30 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 207.

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II FROM 'FURIOUS REVOLT' TO RESIGNATION

1. '[A] Wilson Peace' or 'a scrap of paper'

The day of 30 May 1919 opened for Smuts a phase of 'furious revolt'[1543] in his struggle at the Paris Peace Conference. He wrote to Alice Clark:[1544]

> It would be dreadful if, while the war began with a 'scrap of paper,'[1545] it were also to end with another 'scrap of paper,' and the Allies' breach of their own undertaking. I am going to fight it out on this basis[1546]

He commenced his fight that very day with a letter to Wilson. 'Even at the risk of wearying you I venture to address you once more,' Smuts began.[1547] He continued:[1548]

> The German answer to our draft peace terms seems to me to strike the fundamental note which is most dangerous to us, and which we are bound to consider most carefully. They say . . . that we are under solemn obligation to them to make a Wilson Peace[1549] . . . To my mind there is absolutely no doubt that this is so. Subject to the two reservations made by the Allies before the Armistice, we are bound to make a peace within the four corners of your Points and Principles, and any provisions of the

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[1543] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 527. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 93.

[1544] Smuts to A Clark 30 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 207.

[1545] Hancock and van der Poel give the following explanation for Smuts' reference to the 'scrap of paper' that had started the war: 'On 19 April 1839 the Great Powers had signed a treaty which recognized Belgium as an independent State and guaranteed its neutrality. On 4 August 1914 one of the guarantors, Germany, invaded Belgium, whereupon Great Britain declared war on the invader. At the last meeting of the British Ambassador in Berlin with the German Chancellor, Bethmann-Hollweg, the latter bitterly attacked the British Government for going to war "just for a word - neutrality . . . just for a scrap of paper.' *Ibid* 207 note 1.

[1546] That Smuts had regained his fighting spirit was also clear from his letter to Margaret Gillett on 30 May: 'Many think the harm is already done, and that nothing that may now happen in Paris could any longer undo it. Sometimes I have that feeling too. But then again I say to myself that it is cowardly to admit and submit to defeat, that upon to the last moment we *must* exhaust every means in our power to right the situation.' Smuts to MC Gillett 30 May 1919 in *Ibid* 205. Smuts continued: 'And then again I reflect how Evil comes in only to give Good a chance, as happened in the case of South Africa.' *Ibid*.

[1547] Smuts to Wilson 30 May 1919 in *Ibid* 208. Millin posits that it could not have been easy for Smuts to make yet another supplication to the American president: 'The front Smuts shows the world is his mask of pride. It is his pride that causes this reserve a generation of his chroniclers have noted, that prohibits him from acknowledging his mistakes, from explaining his motives, from answering his critics, from resenting his injuries. He dismissed his pride, and risked a rebuff, to recall to Woodrow Wilson what he considered his obligations.' SG Millin *General Smuts volume 2* (1936) 233.

[1548] Smuts to Wilson 30 May 1919 WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 208 (Internal footnotes omitted; Smuts' emphasis).

[1549] ' . . . a peace in accordance with your Fourteen Points and other Principles enunciated in 1918.' *Ibid* 208.

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> Peace Treaty which either go *contrary* to or *beyond* their general scope and intent would constitute a breach of agreement.'

As set forth above,[1550] part of the reason for Smuts' influence on Wilson was the deep intellectual communion they shared with regard to international relations. Both statesmen shunned any reliance on formal legal commitments in the international realm.[1551]

It is therefore curious that, apart from two references to global 'public opinion' - a concept in which Wilson put great stock - Smuts based his entire case on a legal argument, when the old Presbyterian would likely have been much more susceptible to one of the eloquent moral elocutions for which Smuts had become renowned.

With phrases such 'breach of a solemn international undertaking,' 'vindicate international law,' 'within the four corners of your speeches,' and 'letter and spirit of your Points,' Smuts' letter, in language and tone, appeared to be nothing more than a legal opinion:[1552]

> The war began with a breach of a solemn international undertaking, and it has been one of our most important war aims to vindicate international law and the sanctity of international engagements . . . [W]e should all give the gravest consideration to the question whether our peace Treaty is within the four corners of your speeches of 1918 . . . All the one-sided provisions, which exclude reciprocity or equality, and all the pin-pricks, with which the Treaty teems, seem to me to be both against the letter and spirit of your Points.[1553]

Smuts concluded his letter, as he probably should have started it, with an impassioned plea for Wilson to remain faithful to global public opinion:[1554]

[1550] See Chapter 3 (4) above.

[1551] See Chapter 3 (4.2) above.

[1552] *Ibid* 208 - 209.

[1553] Smuts proceeded to inundate Wilson with detail to which, as Smuts must have known, the American president was temperamentally disinclined: 'I cannot find anything in the Points or Principles which would cover, for instance, the one-sided internationalization of German rivers, and the utterly bad and one-sided administration arranged in respect of them. Reparation by way of coal cannot cover the arrangements made in respect of the Saar Basin and its people. I even doubt whether the occupation of he Rhine for fifteen years could be squared either with the letter of the spirit of your Points and Principles.' *Ibid* 209.

[1554] *Ibid*. Smuts did also refer briefly to public opinion earlier in the letter when he stated that if the Allies ended the war as the Germans had started it - with a 'scrap of paper' - 'the discredit on us will be so great that I shudder to think of its ultimate effect on public opinion.' *Ibid* 208.

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> There will be a terrible disillusion if the peoples come to think that we are not concluding a Wilson Peace, that we are not keeping our promises to the world or faith with the public.[1555]

On 31 May, Wilson replied cordially,[1556] but briefly and noncommittally[1557]:[1558]

> I appreciate the gravity of the situation and thank you for your letter. I am glad to say that I find my colleagues of the smaller Council[1559] quite willing to re-study some of the conclusions formerly reached, and I hope that the coming week may be fruitful of at least some important decisions.

Wilson ignored the main thrust of Smuts' argument.[1560] With Wilson's reply, all correspondence between him and Smuts at Paris ceased.[1561]

[1555] However, Smuts then immediately returned to the legal argument with which he closed his letter: 'But, if in so doing, we appear to break a formal agreement deliberately entered into (as I think we do), we shall be overwhelmed with the gravest discredit, and this Peace may become an even greater disaster to the world than the war was.' *Ibid* 209.

[1556] As before, Wilson assured Smuts that no apologies were needed for his letter of the previous day. Wilson to Smuts 31 May 1919 in *Ibid* 210.

[1557] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 96.

[1558] Wilson to Smuts 31 May 1919 WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 210.

[1559] That is, the Council of Four - the president of the United States, and the prime ministers of Great Britain, France, and Italy. *Ibid*.

[1560] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 528. Smuts was probably not aware, but by the time of his letter, Wilson's 'wings had already been clipped. He was like a rudderless ship in a storm.' FS Crafford *Jan Smuts: A biography* (1946) 175. Curry ascribes Wilson's apparent apathy to illness and fatigue: 'Wilson . . . was in no mood or physical condition to begin anew. Pinning his hope on Germany's eventual entry into the league and in the ability of that body to provide future solutions, he was evidently resigned to making the best of a bad situation.' G Curry 'Woodrow Wilson, Jan Smuts, and the Versailles settlement' (1961) 66 *The American Historical Review* 986.

[1561] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 528; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 96; AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 797.

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2. 'The war was only the vanguard of calamity'

Lloyd George summoned what he described as 'one of the most remarkable Cabinet Councils ever held by the British Empire.'[1562] The object of this 'meeting of British Ministers and Dominion Premiers in Paris' was to consider the Empire's reply to the 'German note.'[1563] Smuts realised that a crucial moment was at hand.[1564] His 'personal appeals'[1565] to Lloyd George and Wilson, having yielded no appreciable results, this would be his opportunity to persuade his Empire colleagues to the comprehensive and far-reaching revisions that he believed to be both imperative and exigent.[1566]

On 30 May 1919, the Empire delegates convened for preliminary discussions at the Hôtel Majestic, with Lloyd George in the chair.[1567] Smuts spoke first, and mounted a comprehensive and compelling attack against those provisions of the draft treaty that he

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[1562] D Lloyd George *The truth about the peace treaties volume 1* (1938) 688. It consisted of nine principal members of the British government and the political leaders of every Dominion. *Ibid*. Lentin describes this conference, 'viewed in the long perspective . . . a defining moment in what has been called the "pre-history of appeasement."' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 96. See also K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112.

[1563] D Lloyd George *The truth about the peace treaties volume 1* (1938) 688. 'We had assembled to sit in judgment upon the reply given to the terms of peace offered by the Allies to an enemy that had fought us for four and a half years, and inflicted incalculable losses and injuries upon us in the course of the most destructive war ever waged in this word.' *Ibid*.

[1564] Smuts cancelled his weekend plans with his friends, Margaret and Arthur Gillett, writing to Margaret on 30 June: 'What changed all my plans was the delivery of the German Note yesterday . . . The danger then was that in my absence the Prime Minister might call a meeting of British Delegates. And I want to be there when we discuss our line of action over this business.' Smuts to MC Gillett 30 May 1919 WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 204.

[1565] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 528.

[1566] Having been won over to his point of view, Smuts hoped that he could induce the British Empire delegation to 'embody it in firm instructions to Lloyd George upon the stand that he must take on behalf of the British Empire.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 528 - 529. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 96. Smuts 'braced himself' for this 'supreme challenge.' *Ibid*; AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 796.

[1567] 'British Empire Delegation Minutes, March - June 1919' in K Bourne & C Watt (gen eds) *British documents on Foreign Affairs: Reports and papers from the Foreign Office confidential print* Part II Series I M Dockrill (ed) *The Paris Peace Conference of 1919 volume 4* [hereinafter, '*British Empire Delegation Minutes*'] 91; ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 71; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 97. The participants consisted of the Dominion representatives, with Smuts representing the Union in Botha's temporary absence, Lloyd George, Balfour, Milner, Barnes, and Cecil. *British Empire Delegation Minutes* 91

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believed to be incompatible with a Wilson peace.[1568] The Allies were 'bound to make a peace within the four corners of the Fourteen Points,' Smuts argued forcefully.[1569] Hughes 'poured cold water' on Smuts' principal argument.[1570] Balfour, too, 'less inclined than most to listen to "German lamentations and misfortunes,"' expressed skepticism over the legally binding nature of the Fourteen Points and the Pre-Armistice Agreement.[1571] However, Smuts indomitably pressed his point, which was 'very serious and should be considered very seriously.'[1572]

For the two lengthy consultative sessions to take place on 1 June,[1573] Lloyd George had also summoned his cabinet colleagues from London.[1574] Before leaving for the prime minister's apartment on rue Nitot that Sunday morning, Smuts wrote to Margaret Gillett:[1575]

> It will be an important meeting and I am deeply interested to know whether any, and how many, others will share my rather strong views. I find a great tendency for people to say: 'Oh, do let us have peace and begin afresh; the Treaty does not really matter so much; and in any case let the League of Nations amend it hereafter if it is unworkable.' This is a very alluring bait . . . It is such a relief to shove your burdens on to the future, especially the League of Nations!

[1568] *Ibid* 92; ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 71; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 97; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 529; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112.

[1569] *British Empire Delegation Minutes* 93.

[1570] *Ibid*; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 97.

[1571] *British Empire Delegation Minutes* 93; MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 576.

[1572] *British Empire Delegation Minutes* 93.

[1573] Discussions began at 11:00, adjourned for a 'short interval for lunch,' and continued 'until late that evening.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 688; ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 72. Mayer describes the meetings as 'marathon.' AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 796.

[1574] Thus, the Empire delegates to the peace conference and the Dominion statesmen were joined by Birkenhead (Lord Chancellor); Churchill (Secretary of State for War); Chamberlain (Chancellor of the Exchequer); Montagu (Secretary of State for India); Fisher (President of the Board of Education); Barnes; and Wilson (Chief of Imperial General Staff). *British Empire Delegation Minutes* 96.

[1575] Smuts to MC Gillett 1 June 1919 WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 211 - 212.

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Lloyd George opened the meeting by putting two questions to 'each individual member of the Delegation':[1576]

1. Was he in favour of standing on the terms proposed in the Draft Treaty, or was he in favour of making some concessions, the nature of which could be considered at a later stage?

2. If any concessions should be made, should they be communicated in a written statement, naming a period within which the Germans must reply, or should verbal negotiations be encouraged?

In reply to the first question, each member answered in the affirmative, *i.e.*, that he was prepared to make 'some concessions' to the draft treaty.[1577]

However, this appearance of unanimity was illusory. Although it is true that every delegate present found some merit in the German response, and recognised the draft treaty presented to the German plenipotentiaries on May 7 to be 'flawed, hastily constructed, and never examined as a whole,'[1578] it is equally true, more importantly, that there emerged two distinct factions of revisionists. The first group, of which Lloyd George and Balfour were the leading proponents, could be termed the 'pragmatic revisionists.'[1579] These realists were concerned with amending the draft treaty only insofar as necessary to induce Germany to sign.[1580] The second group, with Smuts emerging as its clear leader,

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[1576] *British Empire Delegation Minutes* 97; D Lloyd George *The truth about the peace treaties volume 1* (1938) 690. See also ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 72. For a complete account of Lloyd George's opening remarks, see *British Empire Delegation Minutes* 97; D Lloyd George *The truth about the peace treaties volume 1* (1938) 689 - 691.

[1577] *Ibid*. See also ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 72.

[1578] MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 575.

[1579] Fry refers to them as the 'tactical revisionists.' *Ibid*.

[1580] *Ibid* 576. Hancock describes this faction's dilemma as follows: 'Lloyd George, Balfour and other experienced politicians must have been acutely aware of two opposite dangers: on the one hand, the danger of being so harsh with the Germans that they would refuse to sign the treaty and thus force upon the Allies the odium of reversing the machinery of demobilisation and starting the war again: on the other hand, the danger of being more complacent towards the Germans than Clemenceau, Wilson and the other allied leaders would agree to, and thus destroying the united front of the victorious Powers. Lloyd George was trying to find a passage between these two dangers.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 529. Politically, the pragmatic revisionists wanted to be able to face the British public in the event that Germany did not sign, and state that they had done everything in their power to secure peace. MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 575.

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consisted of the 'idealistic revisionists.'[1581] These enragés asked what constituted a principled peace - a Wilson Peace - in accordance with the Fourteen Points.[1582]

According to Lloyd George,[1583] writing almost 20 years after the fact, 'the meeting was especially notable for the calm and impartial spirit displayed by every speaker.'[1584] However, Smuts - who again spoke first after the Prime Minister invited comments - could not, on any account, be described as either 'calm,' or 'impartial.'

Smuts 'violently denounced the treaty' wrote Montagu.[1585] Smuts described the draft treaty as an 'impossible document,' and to sign it, he warned, would be 'a real disaster, comparable in magnitude to that of the war itself.'[1586] The German objections were

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[1581] Or, the 'radical revisionists,' as Fry refers to them. *Ibid.* To Lloyd George, the first of the dangers identified in the previous footnote seemed to be the greater. Smuts, on the other hand, was ready to face the second danger, if the choice had to be made. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 529.

[1582] MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 578.

[1583] The meetings of 30 May and 1 June, were 'inadequately documented.' MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 575. In addition to the *British Empire Delegation Minutes, h*istorians have to rely mostly on accounts of the events by those participants who wrote about them. The account that Lloyd George published almost 20 years after the event, notes Keith Hancock, is 'reasonably full; but it contains some inaccuracies of fact and is in some degree slanted to support the arguments which he himself favoured and caused to prevail.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 529. Michael Fry goes further in stating that one of the purposes of Lloyd George's two volume work on the peace treaties was to document his 'own contributions to the treaty, perhaps to the point of making his the principal architect.' MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 586. Some circumspection is therefore warranted in dealing with especially Lloyd George's account of the meetings of British delegates.

[1584] D Lloyd George *The truth about the peace treaties volume 1* (1938) 688. Lloyd George continued: 'As far as the temper that prevailed was concerned, it might have been a meeting of the official representatives of a benevolent neutral called upon to adjudicate upon the points in dispute between the parties.' *Ibid.*

[1585] Montagu as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 98. Although Lloyd George gives a seemingly accurate account of some of Smuts' specific criticisms of the draft treaty, he omits entirely 'the strong stand' Smuts took on a matter of principle at the outset, expounding his thesis 'forcibly and at length.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 529. Lloyd George only states that 'General Smuts led off with a severe criticism of the Treaty.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 691. MacMillan states that Smuts made an 'impassioned speech.' M MacMillan *Paris 1919: Six months that changed the world* (2001) 469.

[1586] *British Empire Delegation Minutes* 98.

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'perfectly sound;' the Allies were circumscribed in making 'a peace of a certain kind - a Wilson peace.'[1587]

His 'first and fundamental point,' Smuts emphasised, was that this was 'not a mere matter of form or a technical question,' but one of 'vital substance.'[1588] The draft treaty 'bristled with provisions which were outside the Fourteen Points,' and others 'which were inconsistent with the Fourteen Points.'[1589]

They were also repudiating, not only Wilson's universally accepted declarations, but also the pledges that the British people themselves had given as to war aims.[1590] Lloyd George had publicly expounded upon these pledges in January 1918, and again in September 1918. 'For myself,' Smuts said, 'I have always looked upon these declarations as bedrock, and as governing any peace treaty which would be made at the end of the war.'[1591]

Over and above this matter of agreements and declared policies, 'a consideration of the document on its merits' showed that the draft treaty would make a 'bad peace.'[1592] Not only were the terms 'not just,' and could they not be 'durable,' but they would also 'produce political and economic chaos in Europe for a generation,' and 'in the long run it will be the British Empire that will have to pay the penalty.'[1593]

Smuts continued:[1594]

> The roots of war are in the document, it will be no use calling it unprovoked aggression when it comes. You cannot make fire under such a pot without it boiling over. When aggression comes, it will be called unprovoked, and then, under the guaranteeing agreement, the British Empire will be called to jump in.

[1587] *Ibid*. Smuts threw down the gauntlet by challenging 'any lawyer to go through the correspondence with the Germans before the Armistice and then say that the Allies were not bound to make a peace on Wilson's terms and on the basis of his speeches.' *Ibid*.

[1588] *Ibid*.

[1589] *Ibid*.

[1590] *Ibid*.

[1591] *Ibid*.

[1592] *Ibid*.

[1593] *Ibid*.

[1594] *Ibid* 99.

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Following the recapitulation of his objections on a matter of principle, Smuts advanced five specific features of the draft treaty that required drastic revision.[1595] Firstly, Smuts called for the expunction from the draft treaty of the proposed French 15-year military occupation of the Rhineland, a 'large and rich part of industrial Germany.'[1596] In Smuts' view, such an occupation was 'indefensible from every point of view. Military occupation and industrial conditions were incompatible ideas.'[1597]

Secondly, Smuts advocated that 'Germany should become a member of the League of Nations as soon as the Treaty was signed.'[1598] This was necessary to avoid the perception that the victors were driving Germany out the community of nations,[1599] thus removing 'the possibility of another combination through Germany and Russia joining hands in misfortune.'[1600]

'Some parts of the Draft Treaty should be scrapped altogether,' Smuts declared.[1601] He found three provisions particularly galling. The 'internationalisation of German rivers . . . was a great mistake,' it was 'not covered by the Wilson terms,' and the Allies 'could not expect any country to accept such invasion of its internal sovereignty.'[1602]

[1595] *Ibid*. See generally also D Lloyd George *The truth about the peace treaties volume 1* (1938) 691 - 693; AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 797; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 99.

[1596] *British Empire Delegation Minutes* 99.

[1597] *Ibid*. In *The truth about the peace treaties*, Lloyd George declared himself 'in entire sympathy' with this criticism of Smuts. He only agreed to it, he added 'under pressure from President Wilson because it represented a compromise he had arranged with Clemenceau.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 692. Upon a question from Lloyd George as to any specific proposals that Smuts may have with regard to the size of the army or the length of the occupation, Smuts apparently answered that, 'in the first place he preferred that there should be no Army of Occupation at all, considering, as he did, that the other provisions of the Treaty were sufficient safeguard for what was required . . . If an Army of Occupation were absolutely unavoidable, he would limit it to the number necessary to deal with German aggression - in view of the small forces left to Germany.' Smuts as quoted in *Ibid*.

[1598] *Ibid* 99.

[1599] According to Lloyd George, British intelligence had learned that this was a point of particular concern for the Germans. D Lloyd George *The truth about the peace treaties volume 1* (1938) 705.

[1600] *British Empire Delegation Minutes* 99.

[1601] *Ibid*.

[1602] *Ibid*.

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In addition, the 'Eastern settlement was thoroughly bad.'[1603] Poland was a 'historic failure, and always would be a failure,' and with the draft treaty, the Allies were 'trying to reverse the verdict of history.'[1604]

Lastly, as regards the issue of reparations, Smuts favoured 'fixing a definite sum which Germany undertook to pay, say, £5,000,000,000, though that was probably not enough.'[1605] This amount 'should be divided . . . among the Allies, each of whom should use its own part as it pleased.'[1606] Smuts concluded his denouncement of the draft treaty by stating earnestly that, as it stood, he could not vote for it, and he doubted whether he could sign it.[1607]

Most of the attendees agreed with Smuts on particular problematic provisions of the draft treaty.[1608] With regard to Smuts' suggestion of a fixed sum in reparations, for example, 'there was a good deal of support.'[1609] So, too, was there 'some assent to General Smuts' comment about quartering a large Army of Occupation on Germany for fifteen years.'[1610] The meeting was also unanimous that Germany 'had made a case for revision of the Eastern boundaries fixed in the Draft.'[1611] That is where the unison ended, however.

Although there was general agreement that it would be 'desirable to bring Germany into the League at the earliest possible moment . . . no Minister took Smuts' view that

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[1603] *Ibid.*

[1604] *Ibid.*

[1605] *Ibid.*

[1606] *Ibid*

[1607] *Ibid*

[1608] *British Empire Delegation Minutes* 99 - 106; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 99. For the views of the other participants, see generally MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 576 - 577; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 99 - 100; AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 797 - 798.

[1609] D Lloyd George *The truth about the peace treaties volume 1* (1938) 694.

[1610] *Ibid.*

[1611] *Ibid.*

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Germany should come in immediately on the signature of the Treaty.'[1612] More importantly, with regard to Smuts' central proposition, *i.e.*, that the Allies were bound to make a Wilson peace, only the other two idealistic revisionists, Barnes and Montagu, openly supported Smuts.[1613]

The leaders of the pragmatic revisionists, Lloyd George and Balfour, 'sitting together on a sofa, made common cause against Smuts.'[1614] Although he would accede in the general agreement that Smuts' attack on the draft treaty was 'most impressive and important,' Balfour began, he 'could not help thinking, however, that Smuts treated the matter in rather too legal a manner.'[1615]

Balfour and the Prime Minister had to accept the Fourteen Points as the basis for the armistice as a matter of urgency and expediency, because, '[t]here was really no question whether there should be an Armistice or not. There had to be an Armistice. Time was the essence of the matter.'[1616]

Balfour agreed that 'if the Fourteen Points were pressed from a legal point of view, it was possible to make out an awkward case,' but it was only necessary to read the Fourteen Points to see that they were 'incapable of being treated in that strictly legal manner . . . It was impossible to interpret these words literally and to make a contract out of them.'[1617]

[1612] *Ibid*.

[1613] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 100. Barnes expressed his 'hearty agreement with General Smuts regarding the general character' of the draft treaty.' *Ibid*. Mayer explains the synergy between Smuts and Barnes in these terms: 'Both were Wilsonians committed to the appeasement of the vanquished and of the social revolution. Both were prepared, furthermore, to strain relations with France in order to conciliate the anti-acceptance forces in Germany as well as the forces of movement throughout the Western world.' AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 797. However, Lentin points out that, politically speaking, Barnes and Montagu were relative 'lightweights.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 100. See also ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 76 ('Barnes presented no threat to Lloyd George since he had no political muscle').

[1614] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 100. See also MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 579; ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 75.

[1615] *Ibid* 107.

[1616] *Ibid*.

[1617] *Ibid*.

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With regard to the reaction of the other delegates to Balfour's attack on Smuts' central thesis, Lentin comments as follows:[1618]

> Balfour's prestige, exquisite courtesy and air of sweet reason were persuasive; and no-one pointed out that he was talking nonsense, or suggested that a lawyer of Smuts' calibre might know better. Lord Chancellor Birkenhead, a brilliant legal mind, said little, and on this, the fundamental issue, nothing at all.

Smuts found no effective support for his principal proposition,[1619] while the Prime Minister and the Foreign Secretary 'contrived to make it seem irrelevant and quixotic.'[1620] The legalist argument also failed Smuts utterly at this important meeting on 1 June 1919 in Paris. He may have had right and the law on his side, but that proved inadequate.[1621]

Smuts' insistence on legality and justice struck the wrong chord with his British colleagues, and 'left them cold,'[1622] especially in light of the prevailing conviction that 'this devastating conflict had been deliberately provoked by the enemy who was now suing for more lenient terms,' among delegates who 'each represented nations that had suffered cruelly from the hurts wantonly inflicted upon them.'[1623] The pragmatic revisionists were willing to make tactical concessions to secure Germany's signature, but they 'felt in their bones that Germany deserved a harsh peace.'[1624]

[1618] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 100.

[1619] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 529.

[1620] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 102.

[1621] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 101. His logic may have been faultless, but his psychology was flawed. *Ibid* 102. As Lentin observes: 'Despite the clarity, vigour and patent sincerity of his presentation, and what Nicolson called his 'tremendous dignity,' he had not found the right words to sway these men.' *Ibid* 101.

[1622] *Ibid* 101. Lentin points to one specific issue that Smuts stressed repeatedly - the internationalisation of Germany's rivers. He characterises Smuts' argument in his regard as 'weak and unconvincing . . . 'not an issue to stir the blood'. *Ibid* 102.

[1623] D Lloyd George *The truth about the peace treaties volume 1* (1938) 688.

[1624] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 101. In his reply to Smuts, Balfour also stated that they 'were facing a world in which tragedy was universal. It was a wrong attitude to fix the mind on the lamentations of the Germans, upon their misfortunes, when in fact the Germans were responsible to the whole world . . .' and he was 'not sure that some members [and here Balfour undoubtedly meant Smuts] had not come to the discussion of this question in a temper produced by Rantzau's pathetic appeals, without sufficiently remembering the other side of the case.' *British Empire Delegation Minutes* 108.

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In addition to being emotionally unpersuasive, Smuts' argument contained an inherent substantive deficiency - one that Lloyd George and Hughes deftly exploited. According to Hughes, the Germans 'had no leg to stand on.'[1625] For, if the terms of the draft treaty were truly inconsistent with Wilson's Fourteen Points - as Smuts so passionately insisted - should it not be left to President Wilson to say so? Wilson, after all, was the best authority on what would constitute a *Wilson* peace. Lloyd George, with his 'hawk's eye for an opponent's weakness,'[1626] had also pressed home this point: 'The President maintained that the draft treaty was a fair exposition of the Fourteen Points.'[1627]

Smuts faced another obstacle. His base of power was severely restricted.[1628] Whereas six months previously, he was a member of the inner circle - Lloyd George's War Cabinet - he now was only the 'second representative of South Africa.'[1629]

Moreover, his voice was not the only one speaking for the Union of South Africa at the meeting in Lloyd George's apartment that Sunday. The Prime Minister of the Union, General Botha, was also present. In *The truth about the peace treaties*, Lloyd George relays a 'dramatic incident,' which, according to him, exemplified the 'spirit of the meeting:'[1630]

> Lord Milner and General Botha had taken their seats next to each other round the table. When General Botha's time came to speak . . . he turned round to Milner, patted him on the knee and remarked . . . 'Lord Milner will remember that it was exactly seventeen years to the day that Peace was signed in South Africa. On that occasion it was moderation which had saved South Africa for the

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[1625] *British Empire Delegation Minutes* 101.

[1626] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 102.

[1627] *British Empire Delegation Minutes* 101. Lentin confirms that, '[h]ere, undoubtedly, Smuts was at his most vulnerable.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 101.

[1628] AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 796.

[1629] Smuts to MC Gillett 19 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 171. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 103.

[1630] D Lloyd George *The truth about the peace treaties volume 1* (1938) 688 - 689, 714. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 101.

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> British Empire, and he hoped on this occasion that it would be moderation which would save the world.'[1631]

However, this 'remarkable moment'[1632] was nothing more than a sentimental exhortation. It certainly did not amount to a condemnation of the draft treaty.

Substantively, Botha was firmly in the pragmatic revisionists' camp. Although he was of the opinion that certain changes were necessary, he was not prepared to go as far as Smuts.[1633] It is difficult to know what difference Botha's support would have made, but there is no doubt that Botha's absence of support manifestly eroded what remained of Smuts' authority.[1634]

Balfour delivered the *coup de grace* for the realists.[1635] At the inception of the meeting, he reminded the attendees that Lloyd George would undoubtedly face staunch French intransigence when he communicated the British views on amending the draft treaty to the Council of Four. It was therefore 'highly important that the Delegation should not bind Mr. Lloyd George too tightly, as he must have liberty to negotiate.'[1636] Towards the end he again 'begged the Delegation to leave absolute discretion to the Prime Minister.'[1637]

Lloyd George then professed to give a 'summing up' of the results of the discussion.[1638] However, as Keith Hancock shows:[1639]

[1631] *British Empire Delegation Minutes* 114.

[1632] Fisher as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 103 - 104.

[1633] AJ Mayer *Politics and diplomacy of peacemaking: Containment and counterrevolution at Versailles, 1918 - 1919* (1967) 798.

[1634] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 104. Dockrill & Goold maintain that Smuts continued to enjoy 'considerable international prestige,' even though his 'far-reaching demands' were not supported by his colleagues. ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 77.

[1635] Lentin remarks that, '[t]ogether they [Lloyd George and Balfour] had turned his [Smuts'] flank. Now Balfour rolled it up.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 104.

[1636] *British Empire Delegation Minutes* 98

[1637] *Ibid* 113.

[1638] D Lloyd George *The truth about the peace treaties volume 1* (1938) 700.

[1639] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 530.

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> [I]t was hardly that, for his purpose in making the speech was not to review the main arguments and proposals that had been put forward but to identify those proposals which he was prepared to urge upon the Big Four.

The modifications to the terms of the draft treaty that Lloyd George was willing to advance on behalf of the British Empire Delegation, pertained to issues with regard to which he had harboured some doubts since the time of the Fontainebleau memorandum:[1640] Amendment to the provisions regarding (i) Germany's eastern frontier, including a plebiscite in Upper Silesia; (ii) the Allied army of occupation in the Rhineland; and (iii) reparations (although the method and extent were left unclear).[1641]

> Smuts felt his defeat keenly. The day after the meeting he stated:[1642]
>
> This morning I got up after five as I could not sleep with this great trouble on my mind . . . I put forward as strong a case for revision of our Treaty as I could[1643] . . . Many members also spoke strongly for revision although none goes as far as I do. In the end the Prime Minister made some concessions which I consider paltry and *there* we now stand. Or rather we are not standing, but rapidly drifting on the rocks . . . I do not see what more I can do than stand and wait for the present. I am not in charge and certainly go much farther than the rest . . .

On that same day, Smuts wrote to Lady Mary Murray, obviously also for the benefit of her husband, the classicist and liberal internationalist, Gilbert Murray:[1644]

> It is useless to deny that I am filled with disappointment and grief at the way things are going. My own unremitting efforts behind the scenes for the last two and a half years seem doomed to failure. At the vital moment there seems to be a failure of leadership, and also a failure of the general human spirit among the peoples. I hope I am wrong but have a sense of impending calamity, a fear that the war was only the vanguard of calamity . . . I cannot look at the draft treaty without a sense of grief and shame.

[1640] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 104.

[1641] *British Empire Delegation Minutes* 116; D Lloyd George *The truth about the peace treaties volume 1* (1938) 701 - 702; 714. See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 530; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 104.

[1642] Smuts to MC Gillett 2 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 212 - 213 (Smuts' emphasis). Of the meeting itself he told Margaret Gillett: 'We had a meeting of our British Delegates yesterday to which other members of the British Cabinet also came from London.' *Ibid* 212.

[1643] 'Balfour called it a "passionate plea,"' Smuts informed his friend. *Ibid*.

[1644] Smuts to Lady Mary Murray 2 June 1919 in *Ibid* 213.

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3. 'This Treaty breathes a poisonous spirit of revenge'

At the conclusion of the meeting of the Empire Delegation and Cabinet members on 1 June, Smuts did not raise any objection to Lloyd George's 'summing up.' Lentin speculates that Smuts, '[h]aving taken the lead in attacking the Treaty . . . may have felt that further intervention on his part would be counter-productive.'[1645] Hancock suggests that the reason for Smuts' silence may have been purely a matter of procedure: '[T]here was no resolution before the meeting' to object to.[1646] What is abundantly clear, however, is that when a written resolution was circulated among the members of the Empire delegation the following day, Smuts protested immediately and vehemently.[1647]

On 2 June 1919, Smuts wrote a 'letter of passionate protest'[1648] to Lloyd George, which was likely also circulated in memorandum form to the other members of the British Empire Delegation.[1649] Smuts essentially accused Lloyd George of misrepresenting the consensus reached at the end of the meeting the previous day:[1650]

> The draft Resolution of yesterday's meeting . . . would make it appear as if the Delegation had been unanimous on all the proposals submitted by you at the end of the meeting . . . I certainly cannot agree that the very restricted amendments suggested do substantial justice to the very strong pleas put forward during the morning sitting, when, in answer to a direct question by yourself . . . each member deliberately stated that he was in favour of substantial amendment. In several cases[1651] . . .

[1645] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 105.

[1646] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 530.

[1647] *Ibid*; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 105. According to Millin, Smuts was 'outraged.' SG Millin *General Smuts volume 2* (1936) 237. Ingham describes Smuts as 'extremely angry.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112. Dockrill and Goold note that 'Lloyd George was mistaken if he thought the British Empire Delegation meeting had satisfied the critics of the draft treaty.' ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 76.

[1648] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 539.

[1649] Hancock and van der Poel report as follows: 'A memorandum by Smuts, in substantially the same terms as this letter, is in the Smuts collection . . . It was probably circulated to the members of the British Empire Delegation.' WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 215.

[1650] Smuts to D Lloyd George 2 June 1919 in *Ibid* 215 - 216. See also ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 76; HC Armstrong *Grey Steel (J.C. Smuts): A study in arrogance* (1937) 238 - 239; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112.

[1651] '[N]otably Mr Churchill, Lord Milner, Lord Birkenhead, Mr Barnes, Mr Montagu and myself . . .' Smuts to D Lloyd George 2 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 215 - 216.

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> reasoned and detailed recommendations were made showing the line of action that we advocated[1652] . . . No proper regard appears to have been paid to the general feeling of the meeting . . .

'[T]he limitation of the resolution,' Smuts declared defiantly, 'cannot be allowed to pass unchallenged.'[1653] As far as he was concerned, Smuts wanted to 'make it quite clear' that he could not agree to 'anything less than the very drastic course he proposed . . .'[1654]

The draft treaty should be 'recast and transformed, so as to be more in accord with our solemn undertakings, our public declarations, and the requirements of a reasonable and practicable policy.'[1655] Smuts again reiterated the specific points of critique and recommendations that he had delineated the day before.[1656]

'This programme I must stand by,' Smuts insisted, 'in view of the view I take of the situation now facing us - grave and fateful beyond words for the British Empire and the whole world.'[1657] With his cosmic view of the passage of time[1658] and the march of history, Smuts ended his letter with a fateful prediction:[1659]

> I very much fear that we are endeavouring to make a Peace for the twentieth century which might have been in place in the seventeenth or eighteenth, but which is entirely opposed to the spirit of our times and may well prove disastrous from every point of view.

[1652] 'In the afternoon sitting General Botha also counselled the moderation of our demands.' *Ibid* 216.

[1653] *Ibid*.

[1654] *Ibid*.

[1655] *Ibid*. See also MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 578; ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 76.

[1656] 'In particular, I specified the immediate entry of Germany into the League of Nations, the abolition of the Occupation, the removal of provisions which are not in accord with the Wilson formulas, as well as of the numerous pin-pricks in the Treaty; the thorough revision of the Eastern boundaries settled for Germany, and the fixing of a reasonable, though high, amount for reparation payable by Germany, partly by way of services rendered in the restoration of devastated areas, and the balance to be now divided in definite proportions between the Allies, the powers of the Reparation Commission, which constitute a serious invasion of German sovereignty, to be thoroughly overhauled.' Smuts to D Lloyd George 2 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 216.

[1657] *Ibid* 216 - 217.

[1658] See Chapter 11 (2.2.6) below.

[1659] Smuts to D Lloyd George 2 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 217. See also R Kraus *Old master: The life of Jan Christian Smuts* (1944) 281.

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Whereas their relationship had become 'distinctly cool'[1660] by the time the Allies received the German reply on 29 May, by this time Lloyd George and Smuts were 'at daggers drawn.'[1661]

Lloyd George reacted with indignation to Smuts' letter.[1662] Although it was true that Smuts and Barnes were in favour of making 'such far-reaching concessions as to amount to a general reconstruction of the whole Treaty,'[1663] Lloyd George repudiated Smuts' account of the general sense of the meeting and vigorously defended his own version of events:[1664]

> I am afraid I cannot accept your account of the meeting yesterday . . . I do not suggest, and I do not think that the Minutes suggest, that the proposal[ ] which I made at the end went as far as you and some others could have wished . . . This proposal received the unanimous support of my colleagues, who authorized me to press it upon the Allies with the whole authority of the British Empire.

Lloyd George were at pains to point out that, '[t]his proposal was considered for a long time; no single member protested against it; no counter-proposal was submitted as an alternative to meet it.'[1665] Significantly, he reminded Smuts, 'you made no remarks upon it yourself, though you had the amplest opportunity.'[1666] Therefore, whatever Smuts may

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[1660] MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 574. Fry also mentions that Smuts was 'in despair at Lloyd George's sheer flippancy.' *Ibid*.

[1661] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 106. Hancock describes Smuts' relationship with Lloyd George by 2 June as 'open conflict.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 531. 'Lloyd George was by now thoroughly exasperated.' ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 76. One of Lloyd George's cabinet secretaries wrote that relations between the two men were 'so strained,' that 'they refused to meet each other at lunch.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 106.

[1662] Millin writes: 'Mr. Lloyd George was no less harassed than Smuts, no less capable of indignation, no less sure of his ground, no less energetic in argument, no less impulsive and ruthless. He hit back.' SG Millin *General Smuts volume 2* (1936) 238. The next day, 3 June, Lloyd George 'took Smuts to task in an angry, hard-hitting reply.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 106. See also HC Armstrong *Grey Steel (J.C. Smuts): A study in arrogance* (1937) 238. It is noteworthy that, nowhere in the two volumes of *The truth about the peace treaties*, does Lloyd George make any mention of either Smuts' protests to the draft resolution or of his response.

[1663] D Lloyd George to Smuts 3 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 217.

[1664] *Ibid* 217.

[1665] *Ibid*.

[1666] *Ibid*.

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have personally thought of the general sense of the meeting on the morning of 1 June, Lloyd George believed himself 'entitled to regard the resolution as representing the general sense' at the end of their deliberations.[1667]

Lloyd George testily said that he 'should like to be a little clearer' as to Smuts' views with regard to the counter-proposals that Smuts was 'now putting forward.'[1668] As if Smuts had not done so on multiple prior occasions, Lloyd George demanded that Smuts should 'specify the provisions which are not in accord with the Wilson formulas and how they should be modified in order to accord with these formulas.'[1669]

'Am I to understand,' Lloyd George asked sarcastically, 'that it is your proposal to depart from the principle of nationality and leave great numbers of downtrodden Poles under Prussian rule?'[1670] Next, Lloyd George lambasted Smuts over those provisions of the draft treaty that, as he very well knew, bore Smuts' unmistakable imprint: reparations[1671] and mandates.[1672] His acerbic questions 'cut close to the bone'[1673]:[1674]

[1667] *Ibid*. See also ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 76. Smuts' protest must have stung, because, without any reference to Smuts' strenuous dissent, Lloyd George again wrote in 1938, somewhat self-righteously: 'It is clear that the summary which I attempted of the comments, criticisms and suggestions put forward by the various Ministers was at the time regarded as perfectly fair, from the fact that there was no correction made by any of those present of my representation of their views.' D Lloyd George *The truth about the peace treaties volume 1* (1938) 695.

[1668] D Lloyd George to Smuts 3 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 218. Lloyd George was, of course, being petty and unfair. As set forth above, Smuts had on numerous occasions in the course of the preceding three months, both in person and in writing, shared his views on the draft treaty with the Prime Minister.

[1669] *Ibid*.

[1670] *Ibid*. 'That is the only way,' Lloyd George continued, 'in which the Eastern boundaries of Germany could be thoroughly revised.' *Ibid*.

[1671] See Chapter 5 (2) above.

[1672] See Chapter 5 (1) above.

[1673] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 539. 'Now, replying to Smuts' accusation about the Draft Resolution . . . Mr. Lloyd George took the opportunity to recall to Smuts, not only his Reparations Opinion, but also this business of German South-West and East Africa.' SG Millin *General Smuts volume 2* (1936) 241. Kraus observes that, 'Lloyd George hit where it hurt. Of course Smuts could not return to his people with empty hands. No delegate could.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 281. See also ML Dockrill & JD Goold *Peace without promise: Britain and the peace conferences, 1919 - 23* (1981) 77; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 107; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112;

[1674] D Lloyd George to Smuts 3 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 218.

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> Are you prepared to forego the claims for pensions and so confine compensation to material damage? The Germans repeatedly request the return of their colonies. Are you prepared to allow German South West Africa, or German East Africa to be returned to Germany as a concession which might induce them to sign the peace?[1675]

On the same day he received Lloyd George's letter, Smuts wrote to Margaret Gillett:[1676]

> Fighting is very hard and bitter here. I am not budging an inch . . . But I have little hope. The last battle of the war is being fought out in Paris, and we look like losing the battle and with it the whole war.

Smuts was by this time thoroughly exasperated with the prime minister's skulduggery: 'Hankey came this morning to say the Prime Minister *really* agrees with me and is doing his best; why am I so hard on him? etc. etc.!'[1677] However, the time for 'dodges and subterfuges'[1678] had passed: 'You get to a stage . . . where nothing matters except doing the right thing . . . The situation calls for right and courageous action.'[1679]

It was in this spirit of boldness and forthrightness that Smuts answered Lloyd George's letter on 4 June. He did not rise to the bait.[1680] 'I reply now merely to answer the queries you put to me,' Smuts stated.[1681] As regard the application of the Wilson formulas:[1682]

> Whatever view one holds of these formulas, I should say that our proposed disposal of the Saar Basin, of Danzig, and of Memel violates them. They are indisputably German territories with German populations, which we have no right under those formulas to tear off Germany, either permanently or temporarily, without their approval. They have as much right to choose to remain under Germany as downtrodden Poles have to be reunited with Poland.

[1675] 'Are you similarly prepared,' Lloyd George also asked, 'to make concessions in regard to German businesses in South Africa, which the Germans also complain of?' *Ibid*.

[1676] Smuts to MC Gillett 3 June 1919 in *Ibid* 219.

[1677] *Ibid* (Smuts' emphasis).

[1678] *Ibid*.

[1679] 'But how hard that is!' Smuts added. *Ibid*.

[1680] Millin describes the tone of Smuts' letter to the Prime Minister as possessing 'an air of still solemnity. He ignored the taunts.' SG Millin *General Smuts volume 2* (1936) 243. Ingham adds that, '[i]f Lloyd George thought by those tactics to weaken Smuts' resolve, he had underestimated the latters' tenacity. Though exasperated almost to the limit, Smuts once again detailed his proposals.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112.

[1681] Smuts to D Lloyd George 4 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 219.

[1682] *Ibid*.

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Smuts 'answered the question about pensions,' writes Millin, 'as if pensions were no particular concern of his.'[1683] His tone was pithy:[1684]

> With regard to reparation, I consider the sum of five thousand million mentioned both by us and the Germans as reasonable, though high, but I would not make the deductions from it that the Germans propose[1685]. . . Whatever the difficulty now, I think we should cut the Gordian knot, and apportion a lump sum, say two thousand million, to restoration, and leave the rest as the amount divisible among the Allies in respect of the other claims, such as pensions. In that way only could we get any real relief for our public.

Smuts renounced 'with great dignity'[1686] Lloyd George's snide remark about South West Africa:[1687]

> With regard to the German colonies, I do not for a moment contemplate their return to Germany as one of the concessions we should make . . . But please do not have the impression that I would be generous at the expense of others, so long as the Union gets South West Africa! In this great business South West Africa is as dust in the balance compared to the burdens now hanging over the civilized world.

Moreover, the peace treaty might very well compromise the political standing of Botha and Smuts in South Africa, because the strength of their position 'has been the belief of a large section of the Dutch population in the spirit of fair play and moderation as characteristic of British policy.'[1688] The signs were 'ominous' whether 'that belief will survive this Peace Treaty':[1689]

[1683] SG Millin *General Smuts volume 2* (1936) 243.

[1684] Smuts to D Lloyd George 4 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 220.

[1685] Smuts continued: 'This amount should now be apportioned by the Allies in respect of "restoration" and other claims, such as pensions. And for two reasons. In the first place, if this is not done the French (and Belgian) claims in respect of restoration would probably eat up everything, and the British tax-payer will get no relief and soon come to the conclusion that he has been deceived. And in the second place, the attempt in the next few years to beat down the French claims in detail will produce intense friction and bitterness. We shall end by being hated as much by the French as the Germans.' *Ibid*.

[1686] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 108.

[1687] Smuts to D Lloyd George 4 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 220 - 221. See also MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 579; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 112.

[1688] Smuts to D Lloyd George 4 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 221.

[1689] *Ibid*.

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> And when the sense of fair play of people is outraged and their faith is destroyed, and a strain is put upon their conscience, they will not look to stop at a bit of desert.[1690]

Smuts expressed compassion and appreciation for the grave responsibility that rested on Lloyd George's shoulders:[1691]

> Prime Minister, do not for a moment imagine that I write in any other but a most friendly and sympathetic spirit, which I am sure you will not resent. Perhaps the main difference between us is that you are struggling in the water, while I shout advice from the shore!

However, Smuts 'fe[lt] deeply' that this was not a time to 'mince matters.'[1692] He reiterated his now characteristic exhortation to claim the moral and ethical high ground; to do 'the right thing':[1693]

> When you are up against a position so terrible in its possibilities for good and evil, you can only do one thing, even if you fail utterly. And that is the right thing, the thing you can justify to your own conscience and that of all other reasonable, fair-minded people.

Smuts closed with the ominous prophecy that had become his refrain:[1694]

> The Treaty breathes a poisonous spirit of revenge, which may yet scorch the fair face - not of a corner of France, but of Europe. Believe me . . .

His impassioned imploration to Lloyd George notwithstanding, Smuts knew that the battle for revision was lost. He stood alone.[1695] Of Smuts' isolation, Hancock writes:[1696]

> The statesmen of the British Empire had gone along with him part of the way; but they had also made quite clear that they were not prepared to support the second representative of South Africa in open

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[1690] 'No, even as regards South Africa, I view the situation created by this Peace Treaty with the gravest concern.' *Ibid*.

[1691] *Ibid*.

[1692] *Ibid*.

[1693] *Ibid*.

[1694] *Ibid*.

[1695] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 108.

[1696] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 532. '[C]ould Smuts really persist, a lone dissenter, against the Empire Delegation, the Big Three, indeed the entire Conference?' asks Lentin. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 110.

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> revolt against the British Prime Minister. Not even Botha, his chief and friend, was prepared to support him in that. He was isolated.[1697]

'I am not looked upon with special favour after the line I have taken,' Smuts wrote to Alice Clark on 16 June.[1698] 'Small men prefer sycophants,' he added.[1699] At the meetings of the British Empire delegation on 1 June, Lloyd George had purposely thanked every Dominion leader but Smuts.[1700] As is evident from the dearth of correspondence in the days after his last plea to Lloyd George, Smuts 'relapsed for a time into his quietest mood.'[1701] He appeared to be resigned to fate: 'I gather the news from the turbid channels of the Paris Press and sit and wait for the end which will come within the next seven days.'[1702]

> Three days prior, he had written to Alice's sister:[1703]
>
> I do not feel inclined to take any interest in things. They have got rather beyond me, and I don't want to be involved in Conference doings more than I can help; so I am just watching things and reading the documents and quietly following developments.

Only the Griqua prayer could save Europe:[1704]

> Our work is so bad that it may have to be scrapped, but as no man has the power or courage to do this work, God may himself appear for the job . . . Meantime let us have faith that Good with triumph and that poor old Europe is not fated to be handed over to the devil.

[1697] Lentin states that, among the reasons why the other Empire delegates did not join Smuts in open revolt against Lloyd George, the force of sheer exhaustion should not be discounted: 'Besides, as Smuts realised, the British Delegation was weary of the Conference, drawn out long beyond all expectations. They wanted an end to it and the Dominion Delegates wanted to go home.' *Ibid* 102.

[1698] Smuts to A Clark 16 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 231.

[1699] *Ibid*.

[1700] MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 584.

[1701] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 534. In his disconsolate mood, Smuts even saw nature colluding with the decision-makers at Paris against a sane and magnanimous peace: 'The rain has not yet come. Beautiful nature is cruelly conspiring with unpitying man to make the world harder and darker.' Smuts to MC Gillett 21 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 241. And, to Alice Clark he wrote on 23 June: 'The heat and drought still continue here, and the country could be set on fire in almost any direction. It is really very serious. So nature and man are conspiring to create suffering for this old world.' Smuts to A Clark 23 June 1919 in *Ibid* 244.

[1702] Smuts to A Clark 16 June 1919 in *Ibid* 231.

[1703] Smuts to MC Gillett 13 June 1919 in *Ibid* 229.

[1704] *Ibid*.

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As Smuts' outward battle for revision became a forlorn hope, his inner struggle intensified: Should he sign the peace treaty or not?[1705]

4. To sign or not to sign

Actually, Smuts was weighing two related considerations: whether to sign or not, *and* whether to speak out against the draft treaty or not. At first, Smuts contemplated speaking out publicly against the draft treaty during the Peace Conference:[1706]

> What shall I do? What could one do? I am much troubled and puzzled. I do not want to attack my own side while negotiations are on, and afterwards it may be too late.[1707]

He decided that it would be imprudent to make any public statement until the treaty had been concluded:[1708]

> The terrible thing is that I dare not say in public what I really feel and what is really going on. I must wait till it is too late - and the Germans have either signed or refused to sign. Any other course would be looked upon, I fear, as treacherous.

If public dissent was not an option, in what other way could he give expression to his grievances if the draft treaty was not radically revised? For the first time, on 20 May, in a

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[1705] 'The record of the battle he fought within himself is contained in the letters that he wrote from the beginning almost to the end of June to his wife, to Alice Clark and her sister, Margaret Gillett, to Keynes and to Botha.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 532. See also SG Millin *General Smuts volume 2* (1936) 271 - 277; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 110 - 111; JC Smuts *Jan Christian Smuts: A biography* (1952) 212 - 213; P Beukes *The holistic Smuts* (1989) 178; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 113 - 114; J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 136 - 137; FS Crafford *Jan Smuts: A biography* (1946) 183 - 184; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 282.; D Wilson *Smuts of South Africa* (1946) 89; HC Armstrong *Grey Steel (J.C. Smuts): A study in arrogance* (1937) 239 - 240.

[1706] Smuts to MC Gillett 2 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 142. 'I have not yet made up my mind what to do,' he wrote to Alice Clark on 2 May. Smuts to A Clark 2 May 1919 in *Ibid* 141.

[1707] Alice Clark encouraged him to speak out against the treaty once the peace was signed: 'While the Conference lasts you, like everyone else, are tongue-tied. But when the so-called peace was made, I think there is a great call to you for service before you return home. You have a great influence in this country, and a clear explanation of the real situation and of your faith in the ultimate peace . . . may act as the "donkey-engine" to set the mighty wheel of progress in motion.' A Clark to Smuts 13 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 156. Her plan of 'speaking afterwards when the harm has been done and defeat has settled down on us,' did not appeal to Smuts. 'But what is one to do?' Smuts to A Clark 16 May 1919 in *Ibid* 161.

[1708] Smuts to MC Gillett 19 May 1919 in *Ibid* 172.

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letter to his wife, the record reveals Smuts' cognisance that he actually may not sign the treaty:[1709]

> My children must never be ashamed of their father's signature . . . It would be hard for me to say publicly that I do not feel able to sign such a peace, and it will cause a great fuss, not only in South Africa, but in the whole world. I feel my responsibility greatly, and that is why I first want to do my best to get the Treaty altered.

The plan of action he envisaged was to mount a campaign in the press and 'on the platform in England and America.'[1710] He would resign as a member of the Union Cabinet, and sell one of his farms to raise money to sustain home and hearth.[1711] That would mean that he would not be able to return to his family before the end of the year, he warned Mrs Smuts.[1712] But duty came first:[1713]

> [W]e are both ready to make any sacrifice for the future peace of the world and for truth and right . . . however much I long for you and the children and precious South Africa, I must do my duty to the end, should this become absolutely necessary.

Smuts had been away from home for three and a half years,[1714] and he must have realised the effect his revelation would have on his wife, for he wrote a second letter to her that same day:[1715]

[1709] Smuts to SM Smuts 20 May 1919 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 176.

[1710] *Ibid* 177. Hancock writes: 'He was isolated. Whatever stand he took he had to take alone.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 532.

[1711] Smuts to SM Smuts 20 May 1919 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 177.

[1712] *Ibid* 177. 'But let us pray that it will not come to that,' Smuts added immediately. *Ibid*.

[1713] *Ibid*.

[1714] Smuts had been away from home since February of 1916 when he took command of the Allied forces in East Africa. WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 177.

[1715] Smuts to SM Smuts 20 May 1919 (translation) in *Ibid* 178 - 179 (Smuts' emphasis).

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> Dearest Mamma . . . you must not take the content of the previous letter too seriously . . . I only wanted to warn you of what *may* happen in case, in the last resort, no large changes are made and the Germans refuse to sign, and I therefore have to make my position clear to the world.[1716]

Smuts ended on a characteristically elevated note:[1717]

> I stand at one of the most difficult points of all. And who knows whether still further and greater troubles for me (and you) will not be born of this Peace Conference. Well, 'come weal come woe,' we shall try to stand faithfully by what is best and highest in our view of life and leave the rest in God's hands.[1718]

As if to reinforce the righteousness of this 'mad crusade'[1719] in his own mind, Smuts also penned a letter to his Quaker friend, Margaret Gillett, on that same day:[1720]

> . . . I have just written to Isie the conclusion to which I have come in regard to this Peace Treaty. It is so bad that I decided not to sign it unless important alterations are made in it . . . I shall resign as Minister of the Union and start a campaign against it among the peoples and try to make them realize that their leaders have proved false to their promises and that the Treaty means a new cycle of wars and woes for the world.[1721]

He knew his wife would approve, he told Margaret, even if that would mean 'further separation' between them. His was a 'solemn duty':[1722]

[1716] 'It will be bitter for me to have to do, and only in the last resort will I take such drastic action,' Smuts reiterated. However, if duty demanded, 'I shall do it, and I know it will be with your entire approval. *Ibid* 179. It was four days before his 49th birthday, and Smuts reflected upon his life: 'And what a life its has been! At one of my presentations of a 'freedom' the chairman said that I was the most romantic figure of my time. Well, I do not know if that is so, but I have been through many things since my appearance as State Attorney on 8 June 1898. These twenty-one years are probably comparable with any period in the history of other lives of our time.' *Ibid*.

[1717] *Ibid*.

[1718] A week later, on 27 May, Smuts wrote to his wife again to assure her that he would not 'stay a day longer in this part of the world than is absolutely necessary,' because he was 'tired of it,' and his 'old Afrikaner heart' yearned for home. Smuts to SM Smuts 27 May 1919 (translation) in *Ibid* 201. 'And won't the arrival be delightful? It will be bitter to return after an impossible peace, and my heart will be unspeakably sore, but your love and the children's will heal the wounds, and and we shall spend our old age happily at Doornkloof.' *Ibid*. In the first of the two letters to his wife on 20 May, Smuts said that he often saw the farm 'in his dreams.' Smuts to SM Smuts 20 May 1919 (translation) in *Ibid* 177.

[1719] Smuts to MC Gillett 20 May 1919 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 180.

[1720] *Ibid* 179.

[1721] This he would do 'only as a last resort and when absolutely necessary.' *Ibid* 179 - 180.

[1722] *Ibid* 180.

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> [W]here millions have suffered beyond the limit of human capacity we must esteem it a privilege to be called to great human service and not count the inconvenience and sufferings to ourselves.[1723]

After discussing his objections to the draft treaty with Balfour and the Prime Minister in person, Smuts wrote on 22 May: 'This . . . is the last warning, and if I am not listened to this time, I shall wait till the end and then appeal to a different tribunal.'[1724] Margaret Gillet implored Smuts not to 'sign that thing unless you are sure,' and expressed the hope that he would not convince himself too easily.[1725]

'How well you have read me,' Smuts wrote back, 'this palpitating me, so full of emotions and reflections, and yet oppressed with a sinking of the heart at the end!'[1726] But he doubted whether she knew the full meaning of what she asked.[1727] 'I know I do not know what not signing that Treaty means,' she retorted, 'but I feel I know enough about what signing means to make me believe you cannot do it and ever have peace in your own being over your own life.'[1728]

On 28 May he informed Margaret Gillett: 'What I shall do at the end depends on heaps of considerations, especially if substantial alterations are made, and on your prayers, dear child.'[1729] She should not think that he is only 'morbidly considering' his 'own position;' that was 'too trifling.'[1730] He was concerned, he emphasised, over the 'thick crop of calamity' that he saw 'sprouting up from this Peace,' and the world their children would live in.[1731]

[1723] His friend was elated: 'Dearest Jannie, Your letter was as the sound of trumpets and the colour and movement of flying banners when I read it this morning . . .' MC Gillett to Smuts 22 May 1919 in *Ibid* 180.

[1724] *Ibid* 182.

[1725] Postscript by Margaret Gillett as quoted in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 202. Ingham comments that Margaret Gillett 'understood all too well that his lively intellect, which saw so many sides to every problem, might discover compelling reasons why he should go along with the other signatories.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 111.

[1726] Smuts to MC Gillett 28 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 202.

[1727] *Ibid*.

[1728] MC Gillett to Smuts 30 May 1919 in *Ibid* 206.

[1729] Smuts to MC Gillett 28 May 1919 in *Ibid* 203.

[1730] *Ibid* 205.

[1731] *Ibid*.

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On 2 June, the day after the plenary meeting of British delegates and Cabinet members to discuss the German reply (at which the Prime Minister agreed to only minor concessions, which Smuts considered to be 'paltry'), he seemed firm in his resolve not to sign: '*This* document in its present form I cannot sign, as it will be a disaster second only to the war itself.'[1732]

His Quaker friends were not the only ones encouraging Smuts to stand firm in his oppugnancy against the draft treaty and to fulfil, what they saw, as his duty to speak out against it.[1733] The British Treasury's chief representative at Paris,[1734] John Maynard Keynes, who had resigned from the British Empire delegation and had walked away from 'this scene of nightmare,'[1735] wrote to Smuts on 8 June: 'I hope immensely that you may come to the conclusion that some public explanation of what is really happening and a protest against it is now the right course.'[1736]

[1732] Smuts to MC Gillett 2 June 1919 in *Ibid* 212 (Smuts' emphasis). On that same day, Smuts received a letter from Margaret Gillett in which she continued her enjoinder against him signing the treaty: '. . . I am horribly afraid that the same class of arguments which made you promote war will end in leading you to join in this Treaty for fear of worse consequences, and I don't believe they are valid, now, for you. Everything you have told me about your argument with the Prime Minister and his lot these two years is inconsistent with giving in to this Peace. I imagine you saying that your refusal, and that of others like you, may plunge the world in chaos . . . and I would answer to that your own belief that the forces moving are so big, so vital, so basic, that probably that is the only way out, and anyway you will give the world an idea, an emotion, an inspiration by doing so (in line with the League of Nations first thoughts) which you cannot do if you acquiesce in this Decree of Death and Failure, and I do believe you have the power to help us to a great, fruitful, restoring Idea, and the world is so famished for it.' MC Gillett to Smuts 2 June 1919 in *Ibid* 214 - 215.

[1733] Alice Clark wrote to Smuts on 15 June: 'So there will be some speaking for you to do before you go back to South Africa. It's a dismal prospect; but I should think that anything would seem better than sitting in Paris waiting for the cataclysm. And if the Germans do sign, and you don't, as I suppose you won't . . . you will still have to do some speaking in as many places as possible to explain your reasons, in order to make your non-signing effective.' A Clark to Smuts in *Ibid* 231.

[1734] SG Millin *General Smuts volume 2* (1936) 255.

[1735] Keynes as quoted in MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 580. As set forth in Chapter 5 (2) above, Keynes resigned in protest against a treaty that he judged to be neither expedient nor just, and against a battle lost over reparations. *Ibid*. 'Intolerable anguish and fury . . . had compelled him [Keynes] to leave Paris.' SG Millin *General Smuts volume 2* (1936) 257. 'Two days previously [*i.e.*, on 8 June] Keynes had done what the trekking boers used to call *kop uittrek*; he had slipped his neck out of the yoke, walked away from the hated ox-team of Paris and by now [*i.e.*, 10 June] he was enjoying the good green grass of Sussex.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 532. He would have done 'no good . . . by lingering on' in Paris, Keynes assured Smuts on 12 June, 'whereas my rage and misery would certainly have become insupportable.' JM Keynes to Smuts 12 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 228.

[1736] JM Keynes to Smuts 8 June 1919 in *Ibid* 222. 'If so,' Smuts' friend continued, 'I am at your service - by pen or any other way.' *Ibid*.

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Smuts encouraged Keynes,[1737] as soon as possible, 'to set about writing a clear, connected account of what the financial and economic clauses of the Treaty actually are and mean, and what their probable results will be.'[1738] As to his own intentions, Smuts appeared to be in a quandary, and he advocated caution:[1739]

> Our actual course we need not decide just yet. Indeed, I have not yet made up my mind on the matter . . . But it is necessary to have a formal Peace in order that the world may have a chance . . . I am still considering both the time and the manner of doing the thing, as very much is at stake, and no tactical mistakes should be made. But I want every preparation for the attack to be made in advance.

'The Treaty will in any case emerge as a rotten thing, of which we shall all be heartily ashamed in due course,' Smuts said.[1740] He also expressed the aspiration that global public opinion might aid them in condemning the vices of the peace treaty:[1741]

> And it may well be that with peace, and the better knowledge of what it all means, a great revulsion will set in and a favourable atmosphere will be created in which to help the public virtually to scrap this monstrous instrument.

[1737] 'Smuts answered at once,' comments Millin, '[h]e always answers at once the letters he means to answer at all.' SG Millin *General Smuts volume 2* (1936) 255.

[1738] Smuts to JM Keynes 10 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 222. 'It should not be too long or technical,' Smuts advised, 'as we may want to appeal to plain man more than to the well-informed or the specialist.' *Ibid* 222 - 223. Keynes assured Smuts that he would be able to complete the work at short notice and with very little delay,' as 'the thing is quite clear in my head and only needs writing out.' JM Keynes to Smuts 12 June 1919 in *Ibid* 228. Millin characterises the relationship between Smuts and Keynes as follows: 'If Paris was the unhappiest time of Smuts' life, it was, at least, an exultant, "Greek" sort of unhappiness - by no means withering to the emotions. Here, battling against the forces of darkness, he was addressing his solitary disciple.' SG Millin *General Smuts volume 2* (1936) 256 - 257. Fry writes: 'Keynes, full of moral indignation, indulging his ego as well as his conscience, repaired to England and, urged on by Smuts, Cecil . . . wrote *The Economic Consequences of the Peace*, published in December 1919.' MG Fry 'British revisionism' in MF Boemeke, GD Feldman & E Glaser (eds) *The Treaty of Versailles: A reassessment after 75 years* (1998) 580. Keynes' work 'effected more than Smuts could have hoped and also more than he could have feared,' remarks Millin. SG Millin *General Smuts volume 2* (1936) 257. In relaying Smuts' considered, *ex post facto* assessment of *The economic consequences of the peace*, Millin states the following: '[I]t did indeed show up the Treaty, but by making a bonfire of the tragic figure of Woodrow Wilson. "It wasn't the book's real merit," he [Smuts] says, "that made it a popular success; or what it actually had to say about the economic consequences. It was its brilliant belittlement of the great leaders, and chiefly Woodrow Wilson. Every paper I saw quoted the part about Wilson's bamboozlement . . . it helped to finish Wilson and it strengthened the Americans against the League."' *Ibid*. Millin comments: 'Greek irony is something that is never far from Smuts' consciousness. Could there be a better example of its working than is offered by Smuts himself? Take only these immediate instances: upholding the Peace he abhors is a system of Reparations based on his own words. He plans to undo the Peace, and what suffers is the thing that matters most to him in his life: the League.' *Ibid*.

[1739] Smuts to JM Keynes 10 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 223.

[1740] *Ibid*. Keynes was also sure that, '[i]n Paris . . . the battle is lost.' JM Keynes to Smuts 12 June 1919 in *Ibid* 228.

[1741] Smuts to JM Keynes 10 June 1919 in *Ibid* 223.

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Writing to his wife from London on the same day as his reply to Keynes, Smuts said that he planned to leave again for Paris on 11 June, 'where the peace negotiations are nearing the end; and let me add, the bitter end.'[1742] He continued 'to feel very bad' about the course of the peace conference, he told her, and he doubted whether he would 'be able to sign this Peace.'[1743]

After all, he had 'fought and worked for a different peace - a peace of reconciliation and recovery among the nations,' whereas this was 'a peace of hatred and bitter estrangement.'[1744] Western civilisation - *European* civilisation, which Smuts had always venerated[1745] - would be the great casualty of this peace:[1746]

> Sometimes it seems to me as if poor old Europe were under sentence of death, and as if she had reached her zenith and will from now on slowly decline. Conditions everywhere are terrible . . .

'My wish, my ardent wish, is to get out of it as soon as possible and to return to home and country,' Smuts told his wife, '[b]ut the cause here weighs heavily on my mind and I am not yet sure what I am going to do.'[1747] Smuts vacillated between the clarion call to action and fatalistic acquiescence:[1748]

[1742] Smuts to SM Smuts 10 June 1919 in *Ibid* 225.

[1743] *Ibid*.

[1744] *Ibid*.

[1745] Dubow writes that, for Smuts, '[a]lways the spread of western civilisation was the driving logic or spirit.' S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 60. See Chapter 11 (2.2.5) below.

[1746] Smuts to SM Smuts 10 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 225. Later Smuts wrote to Alice Clark: 'The world and all of us are being tested as if through fire, and I fear the test is beyond the capacity of Europe.' Smuts to A Clark 16 June 1919 in *Ibid* 232.

[1747] Smuts to SM Smuts 10 June 1919 in *Ibid* 225.

[1748] *Ibid*.

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> Sometimes I feel as if this death sentence on Europe[1749] must be torn to pieces and as if I must set the work going before I return to my dear ones. And then again I feel, what is the use of all this toil? It will and must all soon collapse anyway[1750] . . . So my mind swings from one end to the other.[1751]

According to Smut's best intelligence, most people in Europe and the United States were 'not much interested' in the outcome of the Peace Conference, and they believed that, although the terms of the draft treaty were 'hard and harsh,' this peace was 'probably no more than the enemy . . . deserved.'[1752] Therefore, Smuts reasoned:[1753]

> An out-and-out attack on the Treaty will . . . find a very limited response, and will in fact do much harm by openly playing into the hands of the forces of disorder. It is not *criticism* which is wanted but constructive helpfulness in building up quietly and slowly a new, better, more generous and humane spirit.

Smuts feared that he was left with too small a soapbox from which to bring stronger force to bear:[1754]

> I have been long from home, far away from the base which I have to rely on. I have not been big or effective enough in the last two years to work to a new base and appeal from a world platform. I lack both size and inspiration for that undertaking.

Smuts had for some time contemplated that he might have 'made a mistake in 1917' when he did not 'plunge right into British politics.'[1755] Then, at least, he would now have occupied 'a position at the centre instead of on the periphery' as 'only the second representative from South Africa.'[1756]

[1749] In concluding his letter, Smuts referred to the peace as the 'cell of war and unrest in future.' Smuts to SM Smuts 10 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 226.

[1750] 'Leave this Treaty to its own devices, and it will soon come to an end.' *Ibid*.

[1751] 'My most fervent wish,' Smuts assured his wife, 'is to go back to you, and only the most extreme and bitter fate will keep me from it.' *Ibid* 226.

[1752] Smuts to MC Gillett 16 June 1919 in *Ibid* 232.

[1753] *Ibid* 233 (Smuts' emphasis).

[1754] Smuts to MC Gillett 16 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 233. See also WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 535. 'He had burned his boats in London when he resigned from the War Cabinet,' comments Lentin. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 109.

[1755] Smuts to MC Gillett 19 May 1919 in *Ibid* 171.

[1756] *Ibid*.

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In the autumn of 1917, Lloyd George had vigorously pressed Smuts to take up a seat in the House of Commons. But this was not the only entrée into British politics that Smuts had refused. In the latter years of the war, Lloyd George had considered appointing Smuts as Foreign Secretary.[1757] 'If you had taken charge of the Foreign Office two years ago, as I think you could and should have done,' Alice Clark reminded him, 'the course of events might have been very different.'[1758] The King had also confidentially requested that Smuts stay on in Britain after the war in the expectation that Smuts would eventually become Prime Minister.[1759]

In 1917 Smuts had thought of himself as a man 'on active service for humanity.'[1760] However, in his present circumstances of isolation - he compared himself the *Ancient mariner*: 'all, all alone, alone on a wide, wide sea'[1761] - what more could he do to help?[1762]

The 'only bright spot in a situation of unrelieved gloom' was the League of Nations.[1763] But, with regard to the League, his work was done, 'and the mustard seed will grow through the coming ages.'[1764]

In the waning days of the Peace Conference, his face was 'resolutely set in the direction of South Africa,' Smuts declared on 20 June.[1765] He pined for 'the sunshine and

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[1757] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 109.

[1758] A Clark to Smuts 25 May 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 196.

[1759] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 109.

[1760] Smuts as quoted in *Ibid*

[1761] Smuts to MC Gillett 18 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 235.

[1762] Smuts to MC Gillett 16 June 1919 in *Ibid* 233.

[1763] *Ibid*. For Smuts, the League of Nations was the one beacon of hope to emerge from the Paris Peace Conference: 'It may be that the League will provide the way out of this awful muddle. Things may become so bad in Europe that everybody comes round to the view that the League is the only alternative to a complete breakdown. If that is so, then indeed good will come out of evil.' Smuts to A Clark 16 June 1919 in *Ibid* 232.

[1764] Smuts to MC Gillett 16 June 1919 in *Ibid* 233.

[1765] Smuts to A Clark 20 June 1919 in *Ibid* 239.

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the wide spaces of South Africa.'[1766] He compared himself to Odysseus, homesick for Ithaca.[1767]

However, the Allies' preparations to renew the war[1768] if the Germans refused to sign the treaty,[1769] seemed to have sparked a rebellious impulse in Smuts. In a secret telegram to Botha on 21 June, Smuts stated: '[M]y mind is fully made up not to sign.'[1770] He asked his chief whether he should simply refuse his signature at the proper time, or whether he should first resign as a Union delegate so as to 'not embarrass' Botha.[1771]

Not even the German's capitulation to Foch's ultimatum that he would cross the Rhine and reopen the war should they refuse to sign,[1772] seemed to have weakened Smuts' resolve. 'The Germans are going to sign, they say,' he wrote to Arthur Gillett, '[w]ell, that makes my case all the more singular.'[1773]

[1766] Smuts as quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 108.

[1767] *Ibid*.

[1768] 'In the third week of June the allies made their preparations for renewing the war if the Germans refused to sign; the Royal Navy was ready; Foch went to his headquarters,' notes Hancock. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 534.

[1769] It should be borne in mind that, until 23 June, significant doubt persisted whether Germany would actually sign the treaty. Hancock provides the following chronology: 'On the 16th their counter-proposals were rejected by the allies; on the 22nd they accepted the allied terms with reservations. On the 23rd, under the pressure of an ultimatum, they accepted them unconditionally.' *Ibid*. 'The indecision resulting from the German objections created a dangerous new mood, in which for a time it appeared that the Conference might founder.' JC Smuts *Jan Christian Smuts: A biography* (1952) 212. To the last, Smuts believed that the Germans would refuse to sign. On 13 June he wrote to Margaret Gillett: 'Everybody here thinks the Germans will sign. I don't. Time will soon show who is right.' Smuts to MC Gillett 13 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 229. Time proved Smuts wrong. On Sunday night, 22 June, he said to Arthur Gillett: 'The Germans are going to sign, they say. Well, that makes my case all the more singular, but I feel that they have really no choice, no more than we had at Vereeniging when our dear ones were dying.' Smuts to AB Gillett 22 June 1919 in *Ibid* 243.

[1770] Smuts to Botha 21 June 1919 in *Ibid* 240.

[1771] *Ibid*.

[1772] SG Millin *General Smuts volume 2* (1936) 271. JC Smuts *Jan Christian Smuts: A biography* (1952) 212; J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 137.

[1773] Smuts to AB Gillett 22 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 243.

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On the evening of 22 June, Smuts and Botha discussed Smuts' position with regard to domestic South African politics.[1774] The Afrikaner population might 'jump to the conclusion' that a 'real difference' had arisen between him and Botha.[1775]

This appearance of dissension in the top echelon of the South African Party leadership was just the opportunity that Hertzog and the Nationalists had been waiting for.[1776] Thus, Smuts' refusal to sign might very well undo all the work of unification that was the product of his prolific partnership with Botha over the course of 17 years.[1777]

In addition, South Africa's English population would 'not like or understand' Smuts' action, and they would 'not soon forgive him.'[1778] Therefore, Botha and Smuts would have to abandon their plan of succession - Smuts would not be able to take Botha's place at 'the head of the Union Government' upon Botha's expected withdrawal from public life due to illness soon after their return to South Africa.[1779]

Smuts' refusal to sign was also prone to alienating the people of Great Britain: '[M]ost people in England will be upset by my action.'[1780] Even if he made a public statement explaining his reasons for not signing the treaty - as he recognised he would have to do - 'the statement is sure to anger heaps of good people and to make others doubt my sanity.'[1781] People would think that he was 'trying to put [him]self on a pedestal.'[1782]

[1774] That same day he also wrote to Alice Clark: 'The Germans are certain to sign and I shall be in a very difficult position for I don't want to sign this death warrant for Europe. Not to sign will create quite extraordinary difficulties for me, not least in South Africa . . . But conscience is a rotten business, and I have it at present just as you have that mistake. Perhaps it will pass!' Smuts to A Clark 23 June 1919 in *Ibid* 244.

[1775] Smuts to MC Gillett 23 June 1919 in *Ibid* 244.

[1776] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 111.

[1777] *Ibid*.

[1778] Smuts to MC Gillett 23 June 1919 in *Ibid* 245.

[1779] '. . . we shall have to select some other colleague for the honour.' *Ibid*.

[1780] *Ibid*.

[1781] *Ibid* 245. Smuts remained convinced that, 'the vast bulk of the people don't care tuppence about the details of the Peace, as long as there is a signed Peace.' *Ibid*.

[1782] *Ibid*.

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Then, suddenly, he changed his mind - literally, it seemed, overnight.[1783] On 23 June he assured Margaret Gillett that he was 'not going to sign it on any account.'[1784] On 24 June he informed her, that, '[a]fter all, I am going to sign that Treaty.'[1785] He rationalised his decision as follows:[1786]

> Any other course would make the position of General Botha (who *must* sign) indefensible and impossible. People in South Africa will say that either he is right or I am right; and in the end, irreparable mischief will be done. But I am going to issue a statement to make my position clear[1787] . . . I have passed through an awful time, and although no man can be quite certain of the truth, I feel as if I am acting rightly in this matter.

However, this justification of 24 June could not have been Smuts' reason for changing his mind. It was true that Botha *had* to sign to secure South Africa's new status under international law as an independent Dominion in the British Commonwealth[1788] - 'the object for which he and Smuts had fought throughout their political life since the Boer War.'[1789] It was equally true that Botha *had* to sign to secure South Africa's status as the mandatory power for South West Africa - the object for which he and Smuts had fought at the Peace Conference.[1790]

For Smuts to 'take a separate road' might endow him in the eyes of some with a 'spurious halo of sanctity,' but it would also 'split the party and ruin all the work of State-

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[1783] See A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 111.

[1784] Smuts to MC Gillett 23 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 244.

[1785] Smuts to MC Gillett 24 June 1919 in *Ibid* 247.

[1786] *Ibid* (Smuts' emphasis).

[1787] Smuts continued: 'And I adopt your formula in your . . . last letter . . . "Not in criticism but in faith." In faith that after peace is signed a new spirit will arise among the peoples and that they may yet make the peace which their leaders have failed to make. I am now drawing it up. It is not the peace but the last shot of the war. May it really be the last.' *Ibid* 7. He also informed his friend that he was not going to remain in England after the peace to mount a campaign against the treaty: 'Yes, I am going, dear . . . My statement will be my message and and last word for the present.' *Ibid*.

[1788] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 535.

[1789] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 111. Botha 'had to sign in order to establish South Africa's *right* to sign in its new shape as an independent Dominion.' SG Millin *General Smuts volume 2* (1936) 272.

[1790] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 111.

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building that he and Botha had achieved in seventeen years of patient and loyal fellowship with each other.'[1791]

But, Smuts had been fully aware of these considerations and consequences two days earlier, during the evening of 22 June, when he deliberated with Botha. In relaying his discussions with Botha to Margaret Gillett on 23 June, Smuts had made clear that, although Botha agreed with him, Botha had no choice but to sign in order to secure South Africa's membership in the League of Nations.[1792] Smuts regretted 'bitterly' the course his conscience dictated that he follow,[1793] especially because it would create the impression that he was 'more scrupulous' than Botha, when, in truth, Botha's action was 'certainly nobler' than that of Smuts.[1794]

In Lentin's view, Smuts decided to sign because of the Germans' unconditional acceptance of the draft treaty terms under ultimatum:[1795]

> Come what might, the Treaty was going to be signed. Nothing he [Smuts] might do could prevent that. What then could he achieve by standing out alone? Looked at in that light, there no longer seemed any choice.

However, this explanation is unsatisfactory. It does not account for Smuts' steadfast refusal to sign the treaty, even *after* it became clear that the Germans were, in fact, going to sign.[1796]

The question remains: Who or what caused Smuts' sudden *volte face* between 23 and 24 June?

[1791] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 535. [T]heir lifelong teamwork, the very symbol of the Union of South Africa, was coming to its crowning fulfilment.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 282.

[1792] Smuts to MC Gillett 23 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 244.

[1793] 'I can't help myself,' Smuts wrote. *Ibid*.

[1794] *Ibid*.

[1795] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 111 - 112.

[1796] As set forth above, Smuts informed Arthur Gillett on 22 June of the German decision, and that this development made his case 'all the more singular.' Smuts to AB Gillett 22 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 243. On the morning of 23 June he stated emphatically to Margaret Gillett: 'I am not going to sign it on any account.' Smuts to MC Gillett 23 June 1919 in *Ibid* 244.

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It is a matter of some speculation, as the historical record is not clear insofar as any direct answers provided by Smuts himself. It would seem that, upon receiving Smuts's telegram, Botha - '[i]mpaled upon the horns of a nasty dilemma'[1797] - cabled the Governor General in South Africa:[1798]

> Smuts refuses to sign Treaty and will publish statement giving grounds for action.[1799] While I substantially share his difficulties against Treaty I have decided to sign as my position as Prime Minister is different from his, and my signature is necessary to make the Union a member of the League of Nations and secure for her the new status in the world.

Initially, Botha had believed that his signature would safeguard South Africa's position in the society of nations, while, simultaneously, Smuts' dissent would 'ease the mind of our Dutch people who will deeply regret when they come to know extreme harshness of Treaty.'[1800] 'We could not defend Treaty as a whole,' Botha had reasoned in his telegram to the Governor General, 'and above compromise appears to make situation easier for us in South Africa.'[1801]

However, Botha soon came to realise - and he made the argument to Smuts during their discussion on 22 June - that the 'above compromise' would render his position in South Africa untenable:[1802]

> [W]hat would the result be in South Africa of Smuts proudly, indignantly, contemptuously refusing to sign the document to which he himself had put his name? Would it not give the idea of division between them? Would it not look as if Smuts had chosen the noble, and Botha the ignoble, course? How could he maintain authority in South Africa in so false a position?

[1797] FS Crafford *Jan Smuts: A biography* (1946) 183.

[1798] Botha as quoted in SG Millin *General Smuts volume 2* (1936) 271 - 272. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 213.

[1799] In fact, Smuts had already began to draft the statement setting forth the reasons for his refusal to sign. Millin quotes the beginning of it: 'I have not been able to sign the Peace Treaty and I wish to summarise briefly the reasons for my action. It is with the deepest regret that I differ from our leaders at the Conference, whose enormous difficulties I appreciate and whose actions I do not presume to criticise. But, largely because of the faulty methods and procedures pursued, conclusions have been arrived at to which I could not in good conscience subscribe my name . . .' Smuts as quoted in SG Millin *General Smuts volume 2* (1936) 272.

[1800] Botha as quoted in *Ibid*.

[1801] Botha as quoted in *Ibid*.

[1802] *Ibid* 272 - 273. With regard to the untenability of Botha's position, Crafford writes: '. . . his friend might be made to shine in the light of righteousness while he himself might be cast out in the lonely darkness.' FS Crafford *Jan Smuts: A biography* (1946) 183.

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Botha asked Smuts to accompany him to Lloyd George. The brilliant political manoeuvrist had a ready solution for the two South Africa statesmen: Smuts should sign under protest. He could then issue his 'critical statement' immediately upon signing the treaty, if he so chose.[1803]

Apparently, it was not just to Lloyd George's pragmatic advice, but also to the pleadings of his chief and friend - 'whom, in his illness, he [Smuts] could not resist'[1804] - that Smuts finally yielded.[1805]

The following day, 24 June, he wrote:[1806]

> [I]n anger and in bitterness I had, like Job, cursed the whole lot of them. But . . . I had no right to curse. I was just as bad as the rest of them and had taken part in the whole job from the beginning, and why should I pose as pure and holy in the end?[1807]

[1803] SG Millin *General Smuts volume 2* (1936) 273. See also HC Armstrong *Grey Steel (J.C. Smuts): A study in arrogance* (1937) 240; JC Smuts *Jan Christian Smuts: A biography* (1952) 213; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 282.

[1804] SG Millin *General Smuts volume 2* (1936) 273. '[H]e [Smuts] knew Botha to be a sick man. Smuts had tried at the Conference to take on as much of his chief's work in addition to his own. He would assist Botha on slow, painful walks. Botha "would be leaning on Smuts's arm, while Smuts would be helping his old friend along tenderly."' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 111.

[1805] Armstrong provides a narrative of these events that seems to blend fact and drama in equal measure. After Smuts informed Botha that he was not going to sign the treaty, Botha 'found Smuts at the Hotel Majestic, getting ready to leave and his batman packing his bags. He would listen to no argument. He was obstinately set. He would not sign, and he was going at once. . . . He [Botha] appealed once more to Smuts, using all his powers of persuasion. "Surely Jannie, you won't desert me now," he said, and Smuts began to waver. Together they went to see Lloyd George. Smuts repeated obstinately that he would not sign and he mentioned a public protest. "Sign and protest afterwards," said Lloyd George. Smuts went away to think out his decision by himself, and Botha, knowing him, let him go . . . For a space he walked in the Champs Elysées, his eyes fixed on the ground, absorbed, fighting out his battle with himself. For Botha the decision had not been difficult. He saw things simply. It was for the good of South Africa, so he would sign, whatever the consequences or the criticisms. Smuts' decisions always came out of a complication of reasoning, a sorting of possibilities, a balancing of alternatives; but his mind worked with such speed that he appeared to be as simple and direct as Botha. Now he had a difficult decision to make . . . Suddenly, he saw that the way out was to sign and protest . . .he walked rapidly back to the hotel and called his secretary. "I have decided to sign," he said, "but I will tell the reason why," and sat down and wrote out at once his memorandum of protest in his own spidery, difficult hand.' HC Armstrong *Grey Steel (J.C. Smuts): A study in arrogance* (1937) 239 - 241.

[1806] Smuts to MC Gillett 24 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 248.

[1807] 'This became his [Smuts'] settled conviction,' notes Hancock, 'Eighteen years later he was invited by Lord Lothian and others to come to England to help "make peace" in Europe. He saw no point, he replied, in ploughing the sands again; he lacked not only the position for undertaking such a task but also the strength and wisdom. His mind went back to Paris in 1919, where he said, "I was as bad as the rest, as I was also partly responsible for some of the mistakes made in that awful time of confused thinking and counselling."' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 544 - 545.

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'So I decided to take my stand in the dock with the rest,' Smuts continued, 'and sent up . . . a prayer to God to have mercy on my soul.'

In a letter of 25 June, Alice Clark attempted one last time to persuade Smuts not to sign.[1808] It was not just the Religious Society of Friends that was looking to him for guidance. She had received a letter 'from a young fellow [she] used to know in London who enlisted in the first day of the war,' she said, 'and who, after hard service, had his health completely ruined'[1809] This wounded soldier lamented that 'the ideals for which he was fighting' were 'being dragged in the dust and trampled under foot.'[1810] 'There must be many like them,' she concluded.[1811]

It had been 'an awful thing' making up his mind to sign the treaty with which he 'so thoroughly' disagreed, Smuts assured her.[1812] And, he would be giving a statement to the press in which he would make his position clear, and plead for a 'real peace of reconciliation among the peoples.'[1813]

[1808] 'I have wondered much as to whether you meant to sign that treaty . . . My feeling is that you shouldn't, for though the Germans are signing under compulsion I cannot see that you will be doing so . . . If you are not bound to sign, your refusal to do so will, it seems to me, be a precious sign to us of the rank and file, who are trying to find each other and keep our way in the darkness, that the end is not yet.' A Clark to Smuts 25 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 250. Margaret Gillett, by this time, seemed to have resigned herself to Smuts signing the treaty. On 27 June she wrote: 'I do feel sad over your signing and keep these days with much mourning of spirit.' MC Gillett to Smuts 27 June 1919 in *Ibid* 254. And, after Smuts had signed, she wrote to him: 'It went very deeply into my heart and soul, your picture of the signing. I must confess I had been feeling very sore over your doing it in the end - more than I was justified, for after all I know so little, and how can I be sure what is right?' MC Gillett to Smuts 3 July 1919 in *Ibid* 261.

[1809] A Clark to Smuts 25 June 1919 in *Ibid* 250.

[1810] *Ibid*.

[1811] *Ibid*.

[1812] Smuts to A Clark 25 June 1919 in *Ibid*. Smuts repeated to Alice Clark that he felt complicit in the treaty: 'I have gone through the war of which this is merely the end, perhaps the inevitable end; and I feel I am no better than the others, and that I must stand in the dock beside them. And God be merciful to us poor sinners.' Smuts to A Clark 25 June 1919 in *Ibid* 251. As usual, he found his Quaker friends ready to offer compassion and comfort. Alice Clark wrote to him on 27 June: 'I grieve for thee much for I can understand something of the personal bitterness which the situation contains for thee . . .' A Clark to Smuts 27 June 1919 in *Ibid* 253. Alice's sister, Margaret Gillett, told Smuts on the same day: 'I do feel sad over your signing and keep these days with much mourning of spirit.' MC Gillett to Smuts 27 June 1919 in *Ibid* 254.

[1813] Smuts to A Clark 25 June 1919 in *Ibid* 251.

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28 June 1919 - a day 'deeply etched in the historical memory of Europe'[1814] - found the 'erect, soldierly figure'[1815] of Smuts in the Hall of Mirrors at the Palace of Versailles[1816] with the other 80 'representatives of the nations.'[1817] 'Yes, I have gone and done it,' Smuts wrote on that day.[1818] It was for him a 'a very trying experience.'[1819]

Apprehensive of a 'very unpleasant scene,' Lloyd George denied Smuts' request to 'say a few words to express [his] feelings.'[1820] 'I said nothing,' Smuts wrote dolefully, 'and felt my signature to be a sacrificial act . . . I am one of them and could not separate myself in the end.'[1821]

[1814] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 112. This date was the fifth anniversary of the double murder at Sarajevo. SG Millin *General Smuts volume 2* (1936) 271; J Joseph *South African Statesman Jan Christiaan Smuts* (1970) 137; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 282.

[1815] FS Crafford *Jan Smuts: A biography* (1946) 183 - 184.

[1816] As Crafford notes, it was also in the Hall of Mirrors in 1871 Germany had dictated a peace to France, and where the 'great German Empire had been born.' *Ibid* 183.

[1817] SG Millin *General Smuts volume 2* (1936) 273.

[1818] Smuts to MC Gillett 28 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 255.

[1819] *Ibid*.

[1820] *Ibid*.

[1821] *Ibid*.

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Despite the opulent surroundings, to Smuts the scene was 'uninspired, unimpressive, mechanical, soulless.'[1822] The lone German plenipotentiaries, Hermann Müller and Johannes Bell, looked 'resigned, impassive.'[1823] Even worse, there was:[1824]

> Not a word of sympathy for them at the end when one little world from Clemenceau or George or Wilson would have meant so much to the broken enemy or to those among their own peoples to whom this Peace is indeed a confession of failure.

Surveying the scene, 'while the business of signing was going on,' Botha - two months before his death 'and expecting it'[1825] - was moved to write on his agenda in Dutch:[1826]

> 28 June 1919. In the new dawn the laws of God will be justly meted out to all peoples and we shall persevere in the prayer that they will be applied to humanity in love and peace and in the spirit of Christ. Today I recall 31 May 1902 (Vereeniging).[1827]

[1822] *Ibid*. Millin describes the scene as follows: 'It was a cool grey day and no wind stirred the half million flags of Paris and the garlands and trophies along the streets and boulevards. Soldiers had come to Versailles at dawn, and since dawn people in their cars and people in other vehicles and on foot had filled the road from Paris to Versailles, solemn people remembering the words of the Mayor of Versailles: "[The Government] desires that the ceremony shall preserve the character of austerity which is fitting should attend the memory of the mournings and sufferings of France." The castle of Versailles was not decorated. The delegates met in the long Hall of Mirrors, beneath the painted figures of its roof, among the marble and gold and gilded bronze, in the sea-light of these mirrors facing the windows to the gardens. They sat on crimson chairs at a table that was the half of a long rectangle. At the same table, on the inside of the rectangle, sat the German representatives. At other tables embraced by the rectangle sat the secretaries and officials, and there too were the tables, covered with golden cloths, at which the delegates were to write their signatures. Smuts' copy of the Treaty printed on parchment in English and French - very simple - is numbered 5. There were three hundred and fifty seats for members of the press and visitors . . . Among all the representatives of the Allies there were only three men who had met the enemy in the field - Foch, Smuts and Botha . . . The Germans rose and signed the Peace Treaty. The Americans, the English and the French followed. South Africa and the other British Dominions signed for the first time as individual nations. The Chinese . . . refused to sign. At a quarter to four the last signature was given, Clemenceau rose and declared the Peace accomplished, the guns fired, and before the others left the Germans left. In England King George said: "The greatest war in history is over. I join you all in giving thanks to God.' SG Millin *General Smuts volume 2* (1936) 273 - 274. See also FS Crafford *Jan Smuts: A biography* (1946) 183 - 184. For a similarly vivid description, see M MacMillan *Paris 1919: Six months that changed the world* (2001) 475 - 477.

[1823] Smuts to MC Gillett 28 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 255.

[1824] *Ibid*.

[1825] SG Millin *General Smuts volume 2* (1936) 274.

[1826] Botha as quoted in Smuts to MC Gillett 28 June 1919 (translation) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 255.

[1827] Before going to the signing ceremony, Botha had said, with reference to the feelings of the German plenipotentiaries: 'My soul has felt the harrow. I know what it means.' Botha as quoted in SG Millin *General Smuts volume 2* (1936) 274.

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'At that moment,' Smuts later wrote about his 'troubled, ailing chief,'[1828] 'when jubilation filled all hearts, he heard the undertone of the ages and felt only the deepest pity for the fate of human kind.'[1829]

Smuts could only but echo Botha's prayer: 'May God have mercy on the victors as well as the vanquished. Who knows whether in this great hour the peoples may not find their soul again.'[1830] As for his own soul, it was 'parched and hard.'[1831] However, although his mind was 'numbed,' and his heart 'dry with sorrow and shame,' Smuts nevertheless felt 'a great hope in the background of it all.'[1832]

5. 'Not in criticism but in faith'[1833]

'I am now drawing it up,' Smuts said to Margaret Gillett on 24 June - the same day that he announced he would sign the treaty after all - in reference to the statement through which he wanted to 'make [his] position clear.'[1834] His position was that this treaty was 'not the peace but the last shot of the war.'[1835]

Similarly, when he sent Alice Clark a copy of his statement on 26 June, Smuts informed his friend that his goal was to shape public opinion, so that people would 'take

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[1828] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 112.

[1829] Smuts as quoted in *Ibid*.

[1830] Smuts to MC Gillett 28 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 255.

[1831] *Ibid*.

[1832] *Ibid*.

[1833] Many commentators refer to Smuts' statement to the press of 28 June 1919 as a 'protest.' See, for example, SG Millin *General Smuts volume 2* (1936) 275; FS Crafford *Jan Smuts: A biography* (1946) 184; R Kraus *Old master: The life of Jan Christian Smuts* (1944) 282; D Wilson *Smuts of South Africa* (1946) 89; JC Smuts *Jan Christian Smuts: A biography* (1952) 213. In retrospect, Smuts himself referred to it as a 'protest' at times. See, for example, Smuts to JM Keynes 17 July 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 266. However, as Hancock rightly notes: '[A]t the time, he called it a 'statement.' It would be incorrect to say that he had signed the treaty under protest; he had signed it in the conviction that it was, things being as they were, the only thing he could do. Its signature marked the end of the war. It did not mark the achievement of peace.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 545.

[1834] Smuts to MC Gillett 24 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 247.

[1835] *Ibid*.

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the view that this is the end of the war, and not yet the Peace, which can only come from the peoples themselves.[1836]

Smuts described the tone of his statement as a 'message of hope and faith more than a criticism of the monstrous document.'[1837] This was also the tact he took with Keynes in a farewell letter of 17 July:[1838]

> After giving the matter my closest consideration I have seen no great profit in a regular attack on the Treaty. It is past and nothing can undo it except time and the Great Mercy which works away all our poor human follies. Better to be constructive.

Smuts sent an advance copy of his statement to CP Scott, the editor of the *Manchester Guardian*,[1839] on 26 June.[1840] In the accompanying letter, marked 'Private and Personal,' Smuts first reiterated that he viewed the treaty as 'a thoroughly bad peace - impolitic and impracticable in the case of Germany, absolutely ludicrous in the case of German Austria.'[1841] 'I have fought this Peace from the inside with all my power,' Smuts stated.[1842] The primary purpose of his statement, however, was to mould public opinion with regard to the Treaty:[1843]

> It is . . . most important that the public be made to take the right view of the Peace from the start. This Treaty is not *the* Peace; it is simply the last echo of the war. It closes the war and armistice stage. The real Peace must still come, and it must be made by the Peoples.

[1836] Smuts to A Clark 26 June 1919 in *Ibid* 251 - 252.

[1837] *Ibid* 252.

[1838] Smuts to JM Keynes 17 July 1919 in *Ibid* 266.

[1839] The explanation for the choice of CP Scott as the journalist to receive an advance copy is clear from the accompanying letter: 'Now that the Peace Treaty is on the point of being signed, I wish to write you a line to express my admiration for the magnificent courage and ability with which you have fought many of its reactionary provisions.' Smuts to CP Scott 26 June 1919 in *Ibid* 252.

[1840] ' . . . in case you want to make use of it on Sunday or Monday.' *Ibid*.

[1841] *Ibid*. Ingham explains: 'The Austrian Empire had ben shorn of four-fifths of its population, some of them Germans, and reduced to a land-locked state of six and a half million Germans whose request to be united with Germany was rejected.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 114.

[1842] Smuts to CP Scott 26 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 252.

[1843] *Ibid* (Smuts' emphasis).

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Smuts became convinced that 'we must meet the brutal fact of this Treaty not so much with bitter and angry criticism as with faith and vision into the future.'[1844] The reason for this conviction was Smuts' fundamental faith in global public opinion:[1845]

> The future is at best very dark; the instincts of the people are after all quite good and sound. They will act up to the light if they see it.

Smuts was determined to provide that 'light' for the people, by appealing to 'their better nature, rather than angering them with direct onslaught . . .'[1846]

Smuts released his statement to the press immediately upon signing the Treaty of Versailles.[1847] 'Even as the bells in Britain were peeling the joyous tidings'[1848] and the 'booming . . . guns' were proclaiming the Peace to 'a weary world,' Smuts' statement was 'published in the great newspapers of London.'[1849] It was regarded as 'one of the mosts striking events of that day.'[1850]

'I have signed the Peace Treaty,' Smuts began his statement, 'not because I consider it a satisfactory document, but because it is imperatively necessary to close the war; because the world needs peace above all . . .'[1851] He made clear that the only ground upon which he agreed to sign, was his view that the peace treaty was 'the close of those

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[1844] *Ibid*.

[1845] *Ibid*.

[1846] *Ibid*.

[1847] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 112.

[1848] JC Smuts *Jan Christian Smuts: A biography* (1952) 213.

[1849] FS Crafford *Jan Smuts: A biography* (1946) 184.

[1850] JC Smuts *Jan Christian Smuts: A biography* (1952) 213. See also FS Crafford *Jan Smuts: A biography* (1946) 184 ('The other was the point-blank refusal of the Chinese to sign at all'). Kraus remarks that Smuts' 'signature, one among a great many, went all but unnoticed. His ringing protest, however, resounded around the globe.' R Kraus *Old master: The life of Jan Christian Smuts* (1944) 282.

[1851] Statement 28 June 1919 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume IV November 1918 - August 1919* (1973) 256. Hancock and van der Poel describes the statement as follows: 'Smuts' Statement on the Peace Treaty was issued to the Press on the afternoon of 28 June 1919.' *Ibid*.

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two chapters of war and armistice,' 'simply the liquidation of the war situation in the world.'[1852]

He made this statement 'not in criticism but in faith.'[1853] Nor did he wish to 'find fault with the work done.'[1854] Smuts believed that, '[i]n the Treaty we have not yet achieved the real peace to which our peoples were looking.'[1855] '[T]he real work of peace' could only begin once the Treaty had been signed.[1856]

organisation, whatever its powers and functions, had to be an improvement on the one which had gone before.[1996]

Thus, at the time the San Francisco Conference convened in April 1945, much was made about the differences between the two organisations, and it was on those differences that people pinned their hopes.[1997] The League of Nations was virtually ignored at San Francisco.[1998] The League's presence at San Francisco was 'unofficial,' and was restricted to Sean Lester, the acting Secretary General, and two others.

In his welcoming address in San Francisco on 26 April 1945, the American Secretary of State, Edward Stettinius, failed to refer to the League of Nations even once - 'as if even a word of allusion might set the ghost of Woodrow Wilson's failure walking the stage of the

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[1996] Almost all those involved in planning the renascent organisation had lived through the disillusioning history of the League. Most had shared the hope that the League, revolutionary in its original conception, would be a vehicle for extirpating war from the face of the earth, and replace it with a system of international conciliation. Instead, they had witnessed that brief and inglorious organisation prove completely ineffectual. The determination to learn from the League's failures was among the most important influences actuating those who sought to establish a new and improved organisation. E Luard *Ibid* 3 - 4. Luard notes that, during the course of the war, there was little disposition to revive the League, the manifest failures of which were universally deplored, and which was nearly defunct by the outbreak of hostilities in 1939. *Ibid* 17. In an attempt to avoid the pitfalls of the Paris peace conference, Allied negotiators at Dumbarton Oakes started their planning for the United Nations while hostilities were still ongoing, they relied upon 'experts' and 'technicians' to make the process appear less overtly political, and they severed the actual peace treaty from the machinery to resolve disputes and keep the peace among the society of nations. E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 142. Although officials of the State Department carefully considered the League experience in formulating American proposals, in their reports on the Dumbarton Oaks proposals, they omitted, for the most part, all references to the League, save in those instances where it was possible to point to the great improvements represented in the new proposals. LM Goodrich 'From League of Nations to United Nations' (1947) 1 *International Organization* 3. The United States also employed a public relations strategy to emphasise the novelty of the United Nations. Alger Hiss, a staff member of the State Department, explains: '[I]t is true that in the early days of the League and up until World War II broke out, the State Department was so afraid of being identified with the League since the Senate had rejected the league, that we did not have a regular observer . . . the League was hush-hush . . .' Yale-UN Oral History Interview with Alger Hiss (11 October 1990) 41. Largely for reasons of political expediency and because of certain adverse attitudes and prejudices that had developed, the revision of the League system was never seriously considered as a means of providing for the desired international organisation. Rather, it was decided to start from scratch and set up an organisation which would not have to combat the unfavourable psychological attitudes which a revised League would very likely have to face in some quarters. LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 20. Kennedy notes that the criticisms against the former League system, some stated openly, some held privately, were 'many, various, and withering.' P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 27. Within the councils of the United Nations, writes Leland Goodrich, 'there was an apparent readiness to write the old League off as a failure,' and too look upon the new organisation 'as something unique, representing a fresh approach to the world problems of peace and security.' Goodrich concludes: 'Quite clearly, there was a hesitancy in many quarters to call attention to the essential continuity of the old League and the new United Nations for fear of arousing latent hostilities or creating doubts which might seriously jeopardize the birth and early success of the new organization.' LM Goodrich 'From League of Nations to United Nations' (1947) 1 *International Organization* 3.

[1997] DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 212.

[1998] HC Nicholas 'Covenant and Charter' in M Waters (ed) *The United Nations: International organisation and administration* (1967) 24.

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San Francisco Opera House.'[1999] In fact, from the addresses and debates at San Francisco,'it would have been quite possible for an outside observer to draw the conclusion that this was a pioneer effort in world organization.'[2000]

However, at San Francisco, as at Dumbarton Oaks, the delegates paid the League a much more profound tribute than any formal eulogy could have expressed: they copied it.[2001] The Dumbarton Oaks Proposals were 'most remarkable' for how much it resembled the scheme for the League of Nations 25 years previously - in objectives and methods, and of plan and structure.[2002]

In the League of Nations, member states came together to cooperate for certain stated purposes, but the association was 'free, unforced, and revocable at any time.'[2003] Neither in the planning stages at Dumbarton Oaks, nor the official drafting stages at San

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[1999] *Ibid* 24; LM Goodrich 'From League of Nations to United Nations' (1947) 1 *International Organization* 3 - 4.

[2000] *Ibid* 4.

[2001] HC Nicholas 'Covenant and Charter' in M Waters (ed) *The United Nations: International organisation and administration* (1967) 24. The League of Nations was a significant, but flawed, institution. The founders of United Nations drew many important conclusions from the creation, evolution, and collapse of the League. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) xiii. Mazower notes that it was the League template that provided model they would refine, modify, and present the world as the proposed United Nations Organization. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 59.

[2002] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 163; LM Goodrich & AP Simons *The United Nations and the maintenance of international peace and security* (1955) 9. In fact, the Dumbarton Oaks Proposals and the Covenant of the League of Nations seemed so similar to former President Herbert Hoover that he remarked that, had Wilson lived, 'he would have seen the League concept rise again from this second blood bath of mankind under the name of the United Nations.' E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 155 - 156. Shortly after the Dumbarton Oaks Conference opened, the columnist Edgar Ansel Mowrer wrote on 24 August in an article entitled 'Woodrow Wilson at Dumbarton Oaks,' that despite their grander ambitions, the statesmen of 1944 would inevitably turn to a universal security system 'not very different from the first League of Nations.' As quoted in RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 245 - 246. Kennedy remarks that the United Nations, inherited many of the features of that earlier experiment in global cooperation, the League of Nations. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) xi. Hilderbrand comments that even the preliminary proposals exchanged by the delegations at Dumbarton Oaks were 'remarkably similar.' RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 183. Marshall asserts that the experience of the League of Nations, and the wording of its Covenant, were much in the minds of the delegates who met at Dumbarton Oaks. The draft Charter towards which they were aiming bore considerable resemblance to the Covenant, notably in the establishment of an Assembly, a (Security) Council with permanent and non-permanent members, an International Court of Justice, and a Secretariat as principal features of the organisation. P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 57.

[2003] DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 212.

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Francisco, was there serious consideration of establishing the new world organisation on any other basis than that of a free association of independent sovereign states.[2004]

Moreover, as to the structure of the new organisation, the various proposals by the Big Three (the United States, the United Kingdom, and the Soviet Union) at Dumbarton Oaks revealed a considerable measure of agreement from the very beginning.[2005] This was partly because 'all were quite prepared to follow . . . the pattern already set by the League.'[2006] All the delegations at Dumbarton Oaks proposed for the new international organisation - as was the case with the League - four main organs of basically the same character discharge approximately the same functions.[2007]

That the delegates at the San Francisco Conference looked to the League as a cautionary tale about pitfalls to avoid, but also as a model worth emulating, is confirmed by Alger Hiss, a member of the research group at the State Department responsible for United States preparation for the Dumbarton Oaks Conference, and acting Secretary General of the United Nations during the San Francisco Conference:[2008]

> The League was regarded as definitely our forerunner. There was no hostility toward it. There was a feeling that it had to be improved upon, that it had failed, and that we could learn from its failure. It was not universal enough; its was too Euro-centered; and it didn't seem to us to have the necessary powers that an international organization should have. And also we knew we would in a literal sense succeed the League and take over its properties and functions . . . The League was considered a brave experiment and there was much we could learn from its few successes and its failures.

[2004] As Jones states: 'It was a powerful, subtle legacy that the League of Nations bequeathed to those who were determined to avoid its mistakes and failures.' *Ibid*. Samuel Moyn describes the United Nations as arising in the 1940s 'as a concert of great powers that refused to break in principle with either sovereignty or empire.' S Moyn *The last utopia: Human rights in history* (2010) 8.

[2005] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 25.

[2006] *Ibid*.

[2007] HC Nicholas 'Covenant and Charter' in M Waters (ed) *The United Nations: International organisation and administration* (1967) 24. Thus, all accepted that the organisation would consist of: (i) an assembly, in which each member state would be represented; (ii) a council, variously termed the 'executive committee' or the 'executive council,' consisting - as in the case of the League - of four or possibly five permanent members, as well as several rotating members from the smaller powers, which would be chiefly responsible for matters relating to peace and security; (iii) an international secretariat under a chief official - a 'director-general' or 'secretary-general;' and (iv) an international court of justice to determine all legal issues arising between member states. E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 25 - 26.

[2008] Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 4 - 5. See also M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 59.

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As Leland Goodrich argues, it should neither be a cause of surprise nor concern that the United Nations is for all practical purposes - in structure and mechanics - a continuation of the League of Nations.[2009] In comparing the United Nations to the League of Nations, Goodrich concludes:[2010]

> The student of international organization must recognize the United Nations for what it quite properly is, a revised League, no doubt improved in some respects, possibly weaker in others, but nonetheless a League, a voluntary association of nations, carrying on largely in the League tradition and by the League methods.[2011]

Likewise, Mark Mazower shows that the United Nations was not the product of revolution, but of evolution; that it was essentially a further chapter in the history of world organisation inaugurated by the League of Nations.[2012] When officials of the United States Department began to prepare a blueprint of the new post-war organisation in 1942, they found Smuts' *A practical suggestion* 'surprisingly apt today.'[2013] In Whitehall, many of the policy makers

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[2009] LM Goodrich 'From League of Nations to United Nations' (1947) 1 *International Organization* 20.

[2010] *Ibid* 21.

[2011] Regardless of changes in the world distribution of power, in the world's economic and political structure, and in the world's ideological atmosphere, and the new problems they create, the mechanics in meeting these problems 'remain much the same.' *Ibid*

[2012] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 17, 14. Some authors argue that so-called 'new' approaches during the Second World War to problems relating to international cooperation, in fact harked back to earlier recommendations for the maintenance of international peace and security formulated during the Hague Conferences of the late 19th and early 20th centuries, and before. E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 505. Waters also states that, neither the League of Nations nor the United Nations should be considered from either the viewpoint of principle or practice, as typifying a new world of international politics. Rather than a discontinuous history, one sees an evolutionary development. M Waters *The United Nations: International organisation and administration* (1967) 7. In his book, *The League of Nations and the rule of law*, Zimmern found one of the influences upon the Covenant in the concept of a Concert of the Great Powers, with its roots going back at least as far as the 'Congress System' of Castlereagh. The essence of this system was to be found in the regular conferences of the powers whose strength both permitted and obligated them to accept special responsibility for the organisation of international order. The League Council was in essence the embodiment of this concept, with the privileged position of its permanent members and its regular meetings. From the outset, the thinking of the architects of the United Nations revolved around this concept. The events of 1940 - 1945, which provided the context for the work of Charter-making, were dominated by the 'Grand Alliance,' as Churchill called the Great Powers. HC Nicholas 'Covenant and Charter' in M Waters (ed) *The United Nations: International organisation and administration* (1967) 27. According to PE Corbett, anyone concerned about the potentialities of the United Nations, and not handicapped by a congenital or occupational contempt for history, the record of the League of Nations is full of instruction. The author believes that the attention paid to Geneva precedents during the drafting of the Charter at San Francisco, is clear to every student of international organisation. And, after the establishment of the United Nations, officials of the organisation 'who are not content with intuition and improvisation turn naturally to the archives of the League. PE Corbett 'Governments vs. peoples' (1954) 6 *World Politics* 236.

[2013] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 14. Goodrich and Hambro write that it was of course soon discovered that it was as impossible as it was unwise to disregard the experience of the League of Nations. Those who carried out the preliminary studies leading up to the exchange of views between governments at Dumbarton Oaks found it indispensable to the successful accomplishment of their tasks to concern themselves with this experience. LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 20.

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that busied themselves with proposals for the new international body, were the same people who were involved with the establishment of the League of Nations.[2014] In his 1946 Creighton lecture, Charles Webster stated that the example of the League 'dominated all the discussions on the drafting of the Charter of the United Nations.'[2015]

FP Walters asserts that, in the perspective of history, the 20-year evolution of the League will be perceived, both in its political and constitutional aspects, as a period of experimentation.[2016] The experiment continues. Walters, writing barely 20 years after the establishment of the United Nations, cautions:[2017]

> [T]he immense changes of recent years present us with a scene which differs so widely from that of say forty years ago, and the operations of the international organizations are on a scale so much greater than was then possible, that special prudence is called for in any attempt to offer valued analogies or useful lessons based on League history, in connection with the United nations and its various component institutions

'However,' continues Walters, 'these institutions, modified and magnified as they may be, are in practically every case the direct and recognizable offspring of those of the League.'

It could hardly be otherwise. The American political scientist, Karl Loewenstein, explained in 1945:[2018]

> While the Covenant makers of 1919 had to build from scratch, the bricks being mainly the utopian schemes prophets, philosophers and visionaries have dreamed through the ages, [the drafters of the United Nations Charter] have before their eyes and on their fingertips twenty years and more of bitter and tale-telling experience of the League of Nations.

Indeed, the study of international organisation is 'a study of evolution, metamorphosis, and experiment, of failure and success.'[2019]

[2014] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 15.

[2015] As quoted in *Ibid* 14.

[2016] FP Walters 'The League of Nations' in E Luard (ed) *The evolution of international organisations* (1966) 39.

[2017] *Ibid*.

[2018] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 150.

[2019] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) xiii.

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2. The United Nations as a United States institution

2.1 Introduction

In *No enchanted palace*, Mazower presents the United Nations as essentially a further chapter in the history of world organisation inaugurated by the League of Nations.[2020] In Mazower's view, the United Nations is linked through its predecessor to the question of empire and the ideas of Euro-centrism and liberal internationalism that emerged out of the waning British Empire.[2021] Thus, the United Nations was a final desperate attempt to preserve the colonial empires of the past, especially the British Empire.

The crux of Mazower's argument is that there existed ideational continuity between the League of Nations and the United Nations. Mazower's thesis is that the United Nations was established in 1945 in order to preserve the large colonial empires possessed by the large European powers at the end of the Second World War. In this regard Mazower points portentously to the key role of Smuts, the long time imperial statesman, in the formation of the organisation, both behind the scenes and in a leading role at the founding San Francisco Conference.

The fundamental flaw in Mazower's argument is his assumption that the continuity between the United Nations and the League was both structural *and* ideological. As has been set forth above, Mazower convincingly shows clear structural continuity between the League and the United Nations. However, the fact that the United Nations structurally resembled the League does not necessarily also imply that the ideological underpinnings of the League carried over to the United Nations.

Mazower works backwards from the San Francisco Conference in 1945, to the early 20th century. There Mazower finds a generation of British liberals whose chauvinist conceptions of civilisational and race difference informed the creation of the League of Nations and then the United Nations.[2022] Inasmuch as Mazower argues that, since the ideological basis of the League was the preservation of empire, the *longue durée* influence

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[2020] The United Nations was 'basically a warmed-up League' - its novelty lay in the participation of the two Great Powers that were absent from the League. *Ibid*.

[2021] *Ibid*.

[2022] G Sluga 'Review of M Mazower *No enchanted palace* [Princeton University Press]' (2010) 125 *English Historical Review* 1280.

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of British imperial ideology and ideologists - such as Smuts - became embedded in the founding of the United Nations, his argument falters.

It is true that, although the moral impetus for the League was provided by Wilson, its intellectual impetus lay in British liberal internationalism and its concordant colonialism. However, the same does not hold true for the United Nations. As set forth below, the intellectual impetus of the United Nations was the United States, a decidedly anti-colonial power, at least during the period of Franklin Roosevelt's administration. Mazower seems to gloss over this significant difference.

2.2 The overwhelming influence of the United States on the United Nations

Recent scholarship reveals that the post-war international organisation was conceptualised, designed, and brought to life to a remarkable degree through the efforts of the United States.[2023]

During the war, Smuts said, he was 'somewhat doubtful about the policy of devoting too much public attention to . . . post-war matters.'[2024] Smuts foresaw two possible dangers. Firstly, there was the possibility of 'people pushing the idea of the war and its early conclusion into the background, and of escaping into dreams of the better world to come.'[2025] The second danger was that people had 'all sorts of visions and hopes and views about the future, and then contentions and divisions arise which destroy the unity which alone will secure victory.'[2026] 'We shall soon be fighting each other over future schemes rather than the enemy,' Smuts stated.[2027]

[2023] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 84. Krasno agrees that the United States was the pivotal power, and took the lead in the creation of this new organisation. J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 10. An interesting perspective is that of Broms, who suggests that the idea of the future United Nations may be traced back to a Declaration which was executed on 12 June 1941 in London by the representatives of Great Britain, Australia, Canada, New Zealand, and the Union of South Africa, together with General de Gaulle of France, and representatives of the exiled governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, and Yugoslavia. The signatories declared that the only true basis of enduring peace was the willing co-operation of free people in a world which, received from the menace of aggression, all could enjoy economic and social security. They also expressed the intention of their governments to work together, and also with other peoples, both in war and peace, to this end. B Broms *The United Nations* (1990) 36 - 37.

[2024] Smuts to MC Gillett 27 February 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 419.

[2025] *Ibid*. This was certainly understandable because it is 'so much pleasanter a vision than this terrible task of fighting the war to a finish.' *Ibid*.

[2026] *Ibid*.

[2027] *Ibid*.

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Smuts believed that the 'old democratic formulas - like the articles of our Protestant or Christian religions - do not suffice us here, and a new outlook towards a new ordered society is called for.'[2028] The post-war order required detailed thought and planning, that neither Smuts nor any of the 'other more responsible leaders' had the time or opportunity for such 'fundamental pondering and planning in the difficulties which face us day to day.'[2029] 'We are drowned in the present struggle and cannot see the distant shore,' Smuts stated.[2030] Smuts recalled Paris in 1919, when all of their 'vast preparatory worked was simply scrapped or ignored.'[2031] The Big Four simply made the decisions 'on such light they had.'[2032] Although '[i]t must not be so again,' Smuts feared much the same situation if this war was to be followed by a peace conference.

However, Smuts' opinion in this regard may have held true for himself, Churchill, and possibly even Stalin - but certainly not for Roosevelt. The United States was determined not to see the debacle of 1919 repeated when Wilson failed to garner Senate approval for the League. As early as April of 1940, well before the United States entered the fray, officials of the State Department, with Roosevelt's encouragement, initiated planning with regard to the form of the international machinery that would replace the defunct League at the end of the war.[2033] These conceptions foreshadowed the institution that finally came

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[2028] Smuts to MC Gillett 14 March 1943 in *Ibid* 421.

[2029] *Ibid*. 'The war has to be carried on, two vast departments administered, parliament to be attended to, the party fight to be led, a general election to be prepared for.' *Ibid*.

[2030] *Ibid*.

[2031] *Ibid*.

[2032] *Ibid*.

[2033] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 18; P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 25; DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 215; LM Goodrich & AP Simons *The United Nations and the maintenance of international peace and security* (1955) 9. Krasno notes that Roosevelt and his secretary of state, Cordell Hull, continued to believe in the League idea, even though it had been discredited for failing to deal effectively with the aggression that eventually led to another worldwide conflict. During the war years, Roosevelt instructed the State Department staff to reconstitute the framework for a multilateral permanent body, based on the League idea, to not only provide the means for consultation and the pacific settlement of disputes, but also to give the organisation enforcement powers to prevent future aggression. J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 9. Hildebrand believes that the preparations in Washington for a new international security organisation were the logical outgrowth both of the 'generation-old Wilsonian prescription for world peace, carefully nurtured by the various League of Nations societies' active in the United States, and Roosevelt's view that the only way to avoid American involvement in major wars was to prevent new conflicts from developing in future. Early planning for a post-war security organisation was also of practical utility: It rendered American involvement in the war seem more palatable to the isolationist-minded who doubted its immediate value. Roosevelt embarked upon a public relations campaign to magnify the importance of the war in the eyes of Americans, by transforming its ultimate purpose into something larger than the issues of the conflict itself - the establishment of permanent peace through postwar international organisation. RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 5.

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into existence: *inter alia*, abandonment of the general rule of unanimity that applied to decisions of the League Assembly; and accordance of a special position in the new executive committee to the great powers.

The United States Government was primarily responsible for getting the major Allied powers in the Second World War to accept the idea of establishing a general international organisation for the maintenance of international peace and security.[2034] The Great Powers submitted proposals for consideration at the Dumbarton Oaks Conference. However, only the United States arrived with a skeleton plan for the structure, and detailed policies on every aspect of, the new organisation.[2035] The United States proposal, which was by far the most detailed and complete, became, to a dominant extent, the basis for

[2034] LM Goodrich & AP Simons *The United Nations and the maintenance of international peace and security* (1955) 9. The United States served as the chief organiser for a series of meetings in late 1943 - at Quebec, Moscow, and Teheran - to determine the configuration of the post-world order. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 108. At the beginning of 1944, the governments of the three powers began, as they had agreed to do in Moscow, to 'draw up a more detailed and comprehensive document' on the form of the post-war organisation. E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 24. Anthony Eden proposed, and the Soviet Union did not raise any objection, that the United States should take the initiative in this process. *Ibid*. Luard concludes: 'The result was that, throughout the discussion which followed, the United States took the initiative, formulating proposals to which the others reacted. And the UN Charter, as it finally emerged, was an only slightly modified form of the original US plan.' *Ibid*. See also M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 386.

[2035] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 109; E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 25. In preparation for Dumbarton Oaks, the State Department had undertaken, and carried our over a period of two years, careful studies and extensive consultations, with s view to the elaboration of a plan that would take into account the experience of the past and that would be acceptable to American public opinion and to Congress. LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 5. When on the eve of the crucial Dumbarton Oaks conversations in the summer and fall of 1944, Foreign Office officials finally had the opportunity of extensive conversations with he State Department, 'they were amazed that the Americans had come up with "such far-reaching suggestions."' 'They should not have been, comments Mazower, 'these had been brewing in the State Department for the past two years, and before than in think tanks like the Council on Foreign Relations and . . . the Brookings Institution.' M Mazower *Governing the world: The history of an idea* (2012) 199.

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discussion at Dumbarton Oaks.[2036] In turn, at a meeting of the heads of delegations at San Francisco, it was agreed that the material to be considered by the Conference should be the Dumbarton Oaks Proposals.[2037]

Normand and Zaidi state that it is 'impossible to exaggerate the extent to which San Francisco was a U.S. show.'[2038] The State Department had been laying the foundational plans for the new organisation since the inception of the war, and nothing was left to

[2036] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 109 - 110; E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 25. Evan Luard comments that, at Dumbarton Oaks, 'the US proposals were quickly accepted as the basis for discussion.' E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 27. The United States approach is reminiscent of that of Smuts at both the National Convention (1908 - 1910) and the Paris Peace Conference (1919), where he arrived with previously prepared, comprehensive organisational plans for each resulting institution - the Union of South Africa, and the Covenant of the League of Nations, respectively. Alger Hiss, who was part of the research group at the State Department that that was responsible for the United States preparations for Dumbarton Oaks, and who acted as the Secretary of both the united States Delegation and the Conference in general, stated: 'What was done by that research group up until at least the Dumbarton Oaks talks makes it proper to say that the United States really was the architect of the UN. That phrase has been prated about. But it's accurate - the Russians had too many distractions, the British didn't have the manpower, and we did - we had an extraordinary group of academic talent to work on all manner of things . . . I think it was largely our show . . .' Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 2, 8. Paul Kennedy states that the Second World War overwhelmed Great Britain and the Soviet Union. The German conquests of Poland and much of Western Europe, the fall of France and the Battle of Britain, the entry of Italy into the war, and the extension of the struggle into the Mediterranean, Balkans, the Middle East, and Africa, the Nazi attack upon the Soviet Union, and the Japanese onslaught in the Far East - these were not circumstances conducive to hard-pressed leaders, such as Churchill and Stalin, reflecting upon an improved post-war structure. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 24 - 25. In the second wartime incarnation of the Anglo-American partnership, the priority of the British was simply to get the Americans committed, not merely to entering the war, but this time to the peace that followed. Planning in detail was a secondary consideration. Churchill personally regard speculation about the peace as a waste of effort. M Mazower *Governing the world: The history of an idea* (2012) 194.

[2037] N Bentwich & A Martin *A commentary on the Charter of the United Nations* (1951) xx.

[2038] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 123.

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chance - even the smallest details were attended to by State Department officials.[2039] Oliver Lundquist, of the Office of Strategic Services, the forerunner of the Central Intelligence Agency, was assigned to work on the graphic presentations for the San Francisco Conference - among other things, designing the United Nations logo, and creating an official delegates' badge as a credential to identify members of the Conference.[2040]

The Conference was hosted in the San Francisco Opera House,[2041] which had been remodelled by Broadway stage designers especially for the occasion. In the Great Hall, four golden pillars tied together with olive branches were built to symbolise Roosevelt's Four Freedoms.[2042] The United States, as first among equals, acted, in the words of one historian, as 'both good and bad fairy at the christening' of the United Nations.[2043] It hosted, funded, and organised the entire San Francisco Conference. It also 'controlled the agenda, monopolised the chair, stacked the votes, and orchestrated the discussions.'[2044]

The key honorary and diplomatic positions were arranged to maximise United States influence. United States Secretary of State, Edward Stettinius was named president of the

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[2039] K Sellars *The rise and rise of human rights* (2002) 5. Many of the delegates arrived by train, crossing the vast plains and winding through the high mountains of the western United States before arriving in the 'City by the Bay' in early spring 1945. They were impressed by the massive size of the country, which, in contrast to Europe, had not been touched by the devastating destruction of the war. Spring in San Francisco was a welcome change from the bombing, fires, and rubble of the war. The Americans left no stone unturned to receive the international delegations with enthusiasm and opulence. J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 21. Most of the delegates of the United Nations came from war-torn and impoverished lands to the peaceful and extravagant city of San Francisco, described by one British delegate as: '[A] fantastic world of glitter and light and extravagant parties and food and drink and constantly spiralling talk.' SS Schlesinger *Act of creation* (2003) 116 as quoted in O Spijkers 'The United Nations, the evolution of global values and international law' PhD thesis, Leiden University, 2011 64. In an interview with Alger Hiss in 1990 as part of the UN-Yale Oral History project, the acting Secretary General of the United Nations at the San Francisco Conference, stated: 'Nothing was spared to make this thing a success . . . We had transportation for all the delegates . . . There were people who had been under wartime rations; here we had plenty of food, drink. There were people who had been in blackouts for years; here was a city resplendent with lights.' Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 21, 31. A junior member of the American delegation at San Francisco, Tapley Bennett, recalls that: 'San Francisco turned itself inside out for they conference, and all the dowagers gave very glittering receptions to which everybody went.' Yale-UN Oral History Interview with Tapley Bennett (24 July 1990) 8 - 9.

[2040] J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 21.

[2041] The Civic Center and the adjacent Veterans' Memorial Building are also utilised for meetings.

[2042] K Sellars *The rise and rise of human rights* (2002) 1.

[2043] S Hazzard *Defeat of an ideal: A study of the self-destruction of the United Nations* (1973) 6 as quoted in K Sellars *The rise and rise of human rights* (2002) 5.

[2044] *Ibid* 5.

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Conference, over the objection of the Soviet foreign minister, Vyacheslav Molotov, who favoured a rotating presidency between the Big Four.[2045] A member of the American delegation, Alger Hiss, was named acting Secretary General of the United Nations, overseeing schedules and devising the rules of procedure for the multitude of committees and plenary sessions.[2046] Hiss claimed in 1990 that: 'I wore two hats . . . But I did my best in the guise of Secretary-General to act quite objectively.'[2047] Hiss further revealed that his staff in the Secretariat were all Americans, except for a few French interpreters.[2048]

Lastly, 'if the American delegation occasionally displayed an uncanny prescience about the direction of debates,' writes Kirsten Sellars, 'it was because the War Department had been secretly intercepting the embassy cable traffic of all the Allies (with the possible exception of the United Kingdom and the Soviet Union),' so that Washington knew in advance the negotiating positions of almost all the 50 countries that assembled in San Francisco.[2049]

Thus, the overall picture that emerges is one of a United States government that left no stone unturned in its efforts to shape a global organisation to suit its interests.

Mazower himself acknowledges that the United States had done more than any other state to set up the United Nations.[2050] He also notes that 'the reversal with the situation in the First World War was striking.'[2051] A key difference between the wartime discussions of 1914 - 1918 and those of 1940 - 1945 was what Mazower calls 'the shift in register:'[2052]

[2045] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 123 - 124.

[2046] *Ibid* 124.

[2047] Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 29.

[2048] *Ibid*. In an interview with a junior member of the United States delegation, Tapley Bennett, in 1990, as part of the UN-Yale Oral History project, Bennet states, in response to a question whether the fact that the Secretariat was almost exclusively constituted of Americans, created resentment, particularly the Latin American delegations: I think people realized that America was the big power and we had done the preparatory work along with a few others, and after all, it took place on American soil . . . we were the dominant power and there was every reason for it to be largely American.' Yale-UN Oral History Interview with Tapley Bennett (24 July 1990) 16 - 17.

[2049] K Sellars *The rise and rise of human rights* (2002) 5; n17. The extent to which the United States spied on other delegations at San Francisco has only recently been revealed, based upon a wealth of documents declassified after almost 50 years in government archives. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 125.

[2050] M Mazower *Governing the world: The history of an idea* (2012) 213.

[2051] *Ibid* 199.

[2052] *Ibid*.

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> As planning moved from London to Washington, a generation accustomed to thinking in classic Oxbridge common-room style about the eternal wisdom of ancient Athens was superseded by a new cohort of policymakers more comfortable with discussions of comparative legal systems, farm economies, or business cycles. Still populated by historians and classicists rather than American-style social scientists, Whitehall had been thinking mostly in terms of a revival of the old Concert diplomacy.

The reliance on professional expertise was intended to stand in stark contrast to the proceedings of the Paris peace conference in 1919.[2053] The view of the Paris conference in the popular imagination of 1940s America was that of 'cynical politicians and amateurish idealists' who based their decisions on 'naked power politics or pious utopian aspirations rather than on a dispassionate analysis of the facts.'[2054]

Thus, it is clear that the United Nations was a creation of the United States to such an extent that the United States was free to imbue the United Nations with an ideological framework different from that of the League. The British liberal imperialism and colonialism of the late 19th and early 20th century that underlay the League, was definitely not the ideational model favoured by the American planners of the League.

Many of the colonial powers looked upon the United States as the centre of anti-colonial feeling, and even went so far as suspecting the United States government of a desire to force changes upon them.[2055] The Roosevelt administration was indeed strongly

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[2053] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 143.

[2054] *Ibid*. At a press conference in 1943 Roosevelt remarked dismissively: 'I have forgotten how many experts we took to Versailles at that time, but everybody who had a "happy thought," or who thought he was an expert got a free ride." Roosevelt as quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 143. Borgwardt notes that Roosevelt himself was 'among those happy free-riders headed to France at the end of World War I.' *Ibid*. The attempt at distinguishing Dumbarton Oaks from the 'politicized' process of 1919 notwithstanding, at least six of the approximately 40 Dumbarton Oaks 'technicians' were veterans of the Paris conference. *Ibid* 144.

[2055] H Gilchrist 'Colonial questions at the San Francisco Conference' (1945) 39 *American Political Science Review* 982.

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invested in anti-colonial ideas.[2056] There was genuine egalitarian feelings behind this in Roosevelt's liberal circles, but there was also a strong element of economic ambition.[2057] A Roosevelt biographer, Warren Kimball notes that, '[t]here was nothing unique about Roosevelt's general distaste for colonialism - it came with being an American.'[2058] His specific critique owed much to Woodrow Wilson, for it built upon the self-determination concept set forth in the Fourteen Points.[2059] Whatever his personal distaste for colonialism on moral and humanitarian grounds, it was his fear that it would disrupt any peace settlement that motivated his actions during the war.[2060]

It may be possible to speculate about Roosevelt's true motivations in his desire to establish a post-war international organisation. However, what is indubitable is that he did not envision a United Nations in service of either the extension or preservation of empire. Throughout the Second World War, the United States brought considerable pressure to bear on the United Kingdom, albeit unsuccessfully, to accept the principle of future colonial emancipation, especially in regards to India.[2061] The Roosevelt administration was

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[2056] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 455. Ironically, especially in light of what were to happen at the first meeting of the Genera Assembly in 1946, Smuts seemed closer to Roosevelt's position that Churchill's. From Pretoria he implored Churchill to consider a more favourable response to India's political aspirations, since Dominion status would have to follow the war as a certainty: 'Why not deal with India in the same generous large spirit in which you have dealt with Russia? The case seems to me unanswerable and we should use all our resources to secure agreement between the religious communities of India and this win the goodwill of India not only for the war effort but also for the troublous years thereafter . . . generosity now is [the] only wise policy with her.' Smuts as quoted in D Dilks *Churchill and company: Allies and rivals in war and peace* (2012) 95. Hancock also shows that , at a press conference in 1919, shortly before his return to South Africa from the Paris Peace Conference, Smuts had approved of the declared policy whereby India in the fulness of time would take her place as an equal member of the Commonwealth. In effect, explains Hancock, Smuts was asserting that the Commonwealth was destined to become something greater than a white man's club. Throughout the next 25 years, he restated this conviction many times in public. He also reiterated it many times in his correspondence to friends, including persons of responsibility, such as Gandhi and LS Amery, the British secretary for India. WK Hancock *Smuts and the shift of world power* (1964) 13.

[2057] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 455.

[2058] WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 128.

[2059] *Ibid*.

[2060] *Ibid*.

[2061] KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 172. However, Washington did not push the issue too far, realising that the United States would have to work closely with Britain regarding future action on the colonial problem and, what was even more important, the immediate task at hand of defeating the Axis Powers. *Ibid*.

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immensely frustrated with Churchill's intransigence on colonial questions, and especially with his unwillingness to move on the decolonisation of India.[2062]

Thus, the fact that the United States adopted the structural model of the League did not mean that it agreed with, much less, adopted, the ideological foundations of the League. It simply means that the United States planners found the League structure best suited to its own purposes - that of maintaining and expanding United States post-war hegemony within its sphere of influence.

3. Smuts and Churchill

Smuts became prime minister of the Union of South Africa for a second time on 5 September 1939. To his friend from the Paris Peace Conference days, the American banker, Thomas W. Lamont, Smuts described the dramatic turn of events as follows:[2063]

> A few days ago I left Pretoria thinking that I might be out of government soon . . . Suddenly the whole situation changed. The prime minister declared for neutrality and I for severing relations with Germany. Parliament supported me, with the result that I am once again prime minister of this country.

Twenty five years previously - to the month and the week - Smuts had also shepherded a resolution through the South African Parliament declaring war on Germany.[2064] 'I never dreamt that I would have to face the same situation in my lifetime; but here it is.'[2065]

Smuts brought a bitterly divided South Africa into the war against Hitler, once again defying the anti-imperialist and often openly pro-Nazi sentiment of the resurgent Afrikaner

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[2062] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 455.

[2063] Smuts to TW Lamont 6 September 1939 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 189. On 4 September, the neutrality motion of the then-prime minister, JBM Hertzog, was defeated and Smuts' amendment to sever relations with Germany was accepted by the House of Assembly by a small margin - 80 votes to 67. The Governor General refused Hertzog's request to dissolve Parliament, whereupon Hertzog resigned. The following day, Smuts was called upon to form a government. See *Ibid* 187, 189 n1. Writing to his wife from Paris on 3 September 1946, Smuts said: 'Dearest Mamma, Look at the date - 3 September - which reminds me of that Sunday in 1939 when we had to fight out the question of our future and our participation in the war in the coalition cabinet. How much has not happened since - what a terrible history, what an overwhelming victory.' Smuts to SM Smuts 3 September 1946 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 45.

[2064] Smuts to TW Lamont 6 September 1939 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 190.

[2065] *Ibid* 190.

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nationalist movement.[2066] Smuts had always stood hostile to Nazism, and he felt a moral obligation to Britain.

However, there was also a strong element of political self-interest in his decision to declare war against the Axis powers. Smuts genuinely believed that South Africa was strategically threatened by the Italian presence in the Horn of Africa and possible future German expansion.[2067]

South Africa's importance to the Commonwealth war effort was described thus in *Time* magazine:[2068]

> [South Africa] is a key to Empire lines: it watches at the confluence of the Atlantic and Indian Oceans.[2069] It is a key to Empire morale: so as its stands by Britain, it bears classic witness, in British eyes, to the basic soundness, the durability of the British Commonwealth . . .'[2070]

Keith Hancock states that, similar to 1917 - 1918, Smuts was 'a deeply involved participator in the British planning of grand strategy.'[2071] On the occasion of Smuts' 71st

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[2066] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53.

[2067] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 446 - 447.

[2068] Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36.

[2069] After the entry of Italy into the war, the Mediterranean became almost impassable for British shipping, making the Cape sea route of critical importance. J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 448.

[2070] Hancock states that Smuts held the Cape route open throughout the dangerous years when the Commonwealth could have hardly survived without it. If the world were to be saved from having Hitler's image stamped upon it, South Africa was necessary geopolitically, and Smuts was necessary politically. K Hancock *Smuts and the shift of world power* (1964) 3.

[2071] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 437. A laudatory article in *Time* magazine stated: 'As in World War I, [Smuts] has been the most dynamic among Dominion leaders. As in World War I, by wisdom, craft, and sheer power of personality, he took his divided people into the war on England's side. As in World War I, his voice is second to no man's save Winston Churchill's in Empire councils . . .' 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36. Bernard Friedman writes that Smuts stood firmly by the Allied cause. Confident of final victory, Smuts not only organised a superb war effort as South Africa's contribution to the winning of the war, but he also rendered invaluable service to Churchill at the vital centre of operations. B Friedman *Smuts: A reappraisal* (1976) 156. On the occasion of Smuts' appointment as a field marshal in the British army, Sir Patrick Duncan, the Governor-General, stated: 'I can tell you from my own experience that there is no one inside or outside South Africa who has to make decisions, whether on military strategy or state policy, who would not seek and follow the advice and council of the General. He is a great rock in a weary world.' As quoted in T Cameron *Jan Smuts: An illustrated biography* (1994) 147.

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birthday on 24 May 1941, the King promoted him to the rank of field-marshal in the British army - the first person from a Dominion upon which this honour was bestowed.[2072]

Smuts played a key role in the campaign in North Africa and advised Churchill on strategic decisions in the Mediterranean and Europe.[2073] Smuts traveled to London on four occasions during the war, to take his place, as in 1917, as the only Dominion prime minister in the British War Cabinet.[2074]

[2072] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 216. In anticipation of this honour, Churchill wrote to Smuts on 16 May 1941: 'The King tells me he is going to send you a special message for your birthday on May 24, so I will send my heartfelt good wishes now.' Churchill to Smuts 16 May1941 in WS Churchill *The Second World War vol III* (1950) 251. On 24 May 1941, Smuts stated in a telegram to King George VI: 'I thank your Majesty most sincerely for your gracious congratulations and good wishes on my birthday, and for the honour of my appointment as field marshal in the British army. I accept this high distinction not only for myself but more especially as a compliment to the people and army of South Africa from our Sovereign.' Smuts to King George VI 24 May 1941 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 300.

[2073] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53.

[2074] 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36. This had been the case ever since the First World War when he was the 'only full Cabinet minister in modern times to have no connexion with either house of parliament.' AJP Taylor *English history 1914 - 1945* (1965) 82 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 187. Smuts also made numerous war-time trips to North Africa to visit South African troops, and to meet with Churchill and other British strategists at the Embassy in Cairo. Shortly after the Cairo Conference in August of 1942, Churchill started sending urgent messages to Smuts, asking him to come to London and stay with Churchill while momentous decisions over future actions and strategy would be made. Smuts only allowed himself five weeks in London, from 14 October to 19 November 1942. He followed a strenuous timetable in London, attending meetings of the War Cabinet twice daily, and also attending meetings of the Defence Committee, Privy Council, and Pacific War Council. T Cameron *Jan Smuts: An illustrated biography* (1994) 149. Towards the end of 1943, Smuts paid his second wartime visit to Great Britain, once again at the urgent behest of Churchill and his inner circle, who valued Smuts' insight and opinions greatly. *Ibid* 153. In August of 1943, the Chief of Imperial General Staff, Sir Alan Brooke, wrote about Smuts: 'I think upon [him] as one of the biggest of nature's gentlemen that I have ever seen. A wonderful clear grasp of all things, coupled with the most exceptional charm. Interested in all matters, and gifted with the most marvellous judgment.' As quoted in *Ibid*.

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At the time war broke out in 1939, Smuts was 'a ubiquitous presence' in the political and intellectual life of Great Britain.[2075] He was held 'in the highest esteem.'[2076] Across the British political spectrum, Smuts was considered a statesman of the first rank, and admired for possessing a first-class mind, a wide vision, and the capacity to see the 'big picture.'[2077]

In 1940, Churchill's private secretary, John Colville, suggested to the Royal family that Smuts could become British Prime Minster should anything happen to Churchill. King George responded favourably to the idea.[2078] On 21 October 1942, Smuts, as a highly regarded elder statesman with experience of government during the First World War, was

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[2075] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 24; J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 443. Bernard Friedman writes that Smuts' prestige abroad was immense. No other Commonwealth statesman, outside of Britain, had ever attained such heights. B Friedman *Smuts: A reappraisal* (1976) 157. From South Africa, Smuts broadcasted on the BBC to Britain, rivalling Churchill and JB Priestly in popularity. In his own way, Smuts became 'something of an unlikely star,' a 'particular hero of the cinema newsreels.' Harold Smith as quoted in B Schwarz *Memories of empire volume 1: The white man's world* (2011) 285. In the celebrated 'Teach Yourself History' series during the 1940s, Smuts was the only living figure included. Williams concluded: '[O]ne might call him one of the most all-embracing geniuses of our age.' As quoted in *Ibid.* Schwarz comments: 'During the war [Smuts] was both a powerful figure within the ruling circles of the British elite, and treated in the media as a popular national hero.' *Ibid* 286. *Time* magazine said of Smuts in this regard: "Britons, willing enough to be taught by Jan Smuts, never think of him as an Afrikaner. They think of him as their elder counselor. In drawing rooms and pubs, when Jan Smuts' dry, old man's voice comes over the radio, the small talk and the bar laughter hushes, and they listen quietly; he is not quite one of themselves, but they respect him and are proud of him.' 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36.

[2076] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 278. Smuts had gained the ear and adulation of the British public, and especially the establishment, which showered honours upon him. J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 443.

[2077] D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 187. Clement Attlee said of Smuts: 'On the strategic side Smuts was exceptional. He had a complete grasp of the situation not only when he was in London but from a distance when he got back. You could see it in all his letters. They were most helpful.' C Attlee *Twilight of empire: Memoirs of prime minister Clement Attlee* (1962) 54 as quoted in *Ibid*. Anthony Eden wrote: 'There was no man living whose wisdom I respected more.' The Earl of Avon *The Eden memoirs: The reckoning* (1965) 68 as quoted in *Ibid*. On 3 October 1943, Harold Macmillan, a future British Prime Minister, entered in his war diary: 'He [Smuts] is going to stay there [England] more or less permanently, as a member of the War Cabinet. This most fortunate for us all. He has all the qualities which will make him an admirable addition to the PM. And it will be very good for Winston to have a colleague older than himself whom he cannot browbeat.' H Macmillan *War diaries: The Mediterranean, 1943 - 1945* (1985) 247 as quoted in O Geyser *Jan Smuts and his international contemporaries* (2001) 108.

[2078] JR Colville *The fringes of power: Downing Street diaries 1939 - 1955* (1985) 270 - 271 as quoted in J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 448.

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given the honour, for a second time, of addressing both Houses of Parliament at the London Guildhall, to present his views on the postwar international order.[2079]

Smuts' influence in Great Britain redoubled when 'his old friend,' Churchill, assumed office in May 1940.[2080] On 13 May 1940, shortly after assuming the office of Prime Minister, Churchill stated in a telegram to Smuts:[2081]

> To you, my friend of so many years, and faithful comrade of the last war, I send my heartfelt greetings. It is a comfort for me to feel that we shall be together in this hard and long trek; for I know you and the

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[2079] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 317; T Cameron *Jan Smuts: An illustrated biography* (1994) 149. Of this occasion, Schwarz writes: '[T]he introduction given by Lloyd George, the thanks by Churchill, and the assembled worthies, in characteristically schoolboy fashion, offering a spirited rendition of 'For he's a jolly good fellow.' Fifteen million people in Britain listened to the speech on the BBC; Pathé, Movietone, and Gaumont newsreels all covered it at length . . . In Washington, President Roosevelt's Pacific War Council postponed its business so its members could listen to Smuts on a short-wave wireless in the president's office. Leo Amery, witnessing the speech from the Royal Gallery, exulted in the wisdom of this 'prophet of Empire' . . . Even George Orwell, far distant from the political allegiances of the likes of Amery . . . could at this time quite unselfconsciously maintain of Smuts that "Few modern statesmen are more respected in Britain."' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 285 - 286. In his introduction, Lloyd George said that '[N]o one in calmness or discernment succeeds him in this age.' T Cameron *Jan Smuts: An illustrated biography* (1994) 149. Friedman describes this address as probably the finest speech of Smuts' career. B Friedman *Smuts: A reappraisal* (1976) 156.

[2080] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 285. Smuts and Churchill had a close personal relationship. Theirs was a friendship that lasted almost 50 years. O Geyser *Jan Smuts and his international contemporaries* (2001) 95. In May 1949, Churchill referred to Smuts as his 'lifelong friend and comrade.' WS Churchill to Smuts 22 May 1949 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 299. At this time, when they we both out of power, Smuts and Churchill wrote to each other using pseudonyms. Churchill was 'Colonel Warden' and Smuts was 'Henry Cooper.' See *Ibid* 293, 298 - 299. Many reasons are advanced for their close friendship. Like Churchill, Smuts was also a fighter, a protagonist in the tragic action of his time. K Hancock *Smuts and the shift of world power* (1964) 3. Smuts had a range of experience, political and military, which no other figure in the overseas Commonwealth could approach. He had shown valour in the field, as had many of those to whom Churchill was close. Smuts possessed 'a wide view of the world.' His views often coincided with those of Churchill, but in some matters of importance did not. However, the two 'always conversed with freedom.' D Dilks *Churchill and company: Allies and rivals in war and peace* (2012) 94. Eden described their partnership as incomparable, though their personalities could scarcely have differed more. The one with his neat philosophic mind, the other so 'crammed with life.' *Ibid*. Churchill once reflected that Smuts was as he imagined Socrates might have been. The prime minister of South Africa stood high in Churchill's list of those with whom it was agreeable to dine. *Ibid*. Ingham comments that theirs was a 'strange, but none the less deep friendship. They were men of utterly different characters yet they seemed to be drawn together by a powerful attraction.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 210. A verbatim note by De Gaulle's staff on 30 October 1942 reads: 'Marshal Smuts asked General de Gaulle not to attach too much importance to Churchill's changes of mood. 'I have known hm a long time,' he said. 'I met him (when he was still lost a child) when we took him prisoner in the Boer war. He's a very good fellow at heart.' As quoted in B Gardner *Churchill in his time: A study in reputation 1939 - 1945* (1968) 206 - 207. Gardner writes that, apart from Beaverbrook and Smuts, Churchill 'did not have many intimate friends among those with whom he had to conduct the war.' *Ibid* 87.

[2081] WS Churchill to Smuts 13 May 1940 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 224.

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> government and peoples of the Union will not weary under the heat of the day and that we shall make a strong laager for all besides the waters at the end.[2082]

Smuts was Churchill's trusted confidant. During the Second World War, Churchill consulted Smuts on a great variety of issues.[2083] The fact that it was Smuts whom Churchill summoned to Cairo to discuss far-reaching changes in the Middle-East command,[2084] is revealing, for Smuts was one of the few war leaders 'whom [Churchill] trusted without equivocation.'[2085] Upon returning from Cairo in August 1942, Smuts wrote to a friend:[2086]

> I had an unexpected summons from Churchill on a Friday to meet him in Cairo on the Monday following . . . We had a great time together, dealing with the military situation in the Middle East, discussing the war situation over the whole world, and finally winding up with war and post-war politics

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[2082] On 7 September, Smuts received a telegram from Churchill, then First Lord of the Admiralty, that simply read: 'I rejoice to feel that we are once again on commando together.' WS Churchill to Smuts 7 September 1939 in *Ibid* 191.

[2083] D Dilks *Churchill and company: Allies and rivals in war and peace* (2012) 84. With regard to Smuts' approval of the Greek campaign, Gardner states that, 'the opinion of this old warrior of the Boer War impressed Churchill. B Gardner *Churchill in his time: A study in reputation 1939 - 1945* (1968) 109 - 110. Smuts was kept fully briefed on and frequently consulted about practical negotiations for a new organisation by Churchill. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 1.

[2084] 'Most of the matters under consideration cannot be written about, but the changes we made in the military command in the Middle East you will know long before you receive this.' Smuts to MC Gillett 10 August 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 377. Following the meeting between Smuts and Churchill, General Alexander succeeded Auchinleck as commander-in-chief in the Middle East, and General Montgomery succeeded Ritchie as commander of the Eighth Army. J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 377. Marshal Tedder wrote to Smuts on 1 September 1942: 'I feel that your presence and your advice during those days of your visit may well prove to have been the turning point in the whole battle for the Mediterranean - and all that goes with it.' AW Tedder to Smuts 1 September 1942 in *Ibid* 382.

[2085] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 278. Churchill believed Smuts to be 'uniquely capable of providing sound advice about the matter at hand.' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 277. 'Churchill . . . set a high value on [Smuts'] judgment.' *Encyclopaedia Britannica volume 20* (1967) 706. The permanent head of the Foreign Office, Sir Alexander Cadogan, thought highly of him. On the occasion of their first meeting on 3 August 1942, Cadogan noted: 'He's certainly impressive and very good company - one of the few men whom I think the PM [Churchill] really respects, and to whom he will listen.' D Dilks *The diaries of Sir Alexander Cadogan OM 1938 - 1945 (*1972) 467 Diary entry for 3 August 1942 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 187.

[2086] Smuts to MC Gillett 10 August 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 377. In Cairo in 1942, Smuts noted: "I am tired. At the Embassy in Cairo, Churchill and I had rooms next to each other, and at all hours of the night he came in with a thought, a cable, just to talk. Churchill doesn't let one sleep, that is why I am tired. But what a man! What a demigod! The more I see of Churchill, the more I think him a demi-god.' As quoted in B Gardner *Churchill in his time: A study in reputation 1939 - 1945* (1968) 200. Smuts believed that his presence in South Africa was essential if the critics of the government were to be kept at bay. It was for that reason, he said, he had turned down Churchill's invitation to accompany him to Moscow to meet with Stalin, and had also rejected a further invitation to visit London. Smuts to MC Gillett 10 August 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 377 - 380.

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> . . . We stayed at the embassy in adjoining rooms and spent most of the time together night and day.[2087]

Indeed, Smuts' credibility in Churchill's circle was quite extraordinary.[2088] 'My faith in Smuts is unbreakable,' Churchill said, 'He is a great man.'[2089] John Colville recalls that, when Smuts arrived in London, Churchill would always cancel all other engagements so that he could devote all his attention to Smuts:[2090]

> When Smuts came to England Churchill would drop all else and listen attentively to the accented words of wisdom, spoken in his staccato tones, which poured from the South African patriarch on all the issues of present and future policy . . . There were few of Churchill's colleagues in the British Government whose opinions carried the same weight.[2091]

[2087] Churchill reached Cairo on 4 August 1942 and the next day wrote to Attlee: 'I am discussing the whole situation with Smuts who is a fount of wisdom.' WS Churchill *The Second World War volume IV* (1950) 415. See also T Cameron *Jan Smuts: An illustrated biography* (1994) 146. Shortly after the Cairo Conference in August of 1942, Churchill started sending urgent messages to Smuts, asking him to come to London and stay with Churchill while momentous decisions over future actions and strategy would be made. Smuts only allowed himself five weeks in London, from 14 October to 19 November 1942. He followed a strenuous timetable in London, attending meetings of the War Cabinet twice daily, and also attending meetings of the Defence Committee, Privy Council, and Pacific War Council. *Ibid* 149.

[2088] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 448. For example, Churchill admitted Smuts to all the secrets of the Anglo-American alliance, including the 'Tube Alloys' project concerning United States manufacture of the atom bomb. K Hancock *Smuts and the shift of world power* (1964) 3; B Schwarz *Memories of empire volume 1: The white man's world* (2011) 285. When Moran, Churchill's private physician, became highly concerned with the Prime Minister's health, he noted in his diary in Cairo on 5 December 1943: 'I've written to Smuts in the strongest terms. He is the only man who has any influence with the PM; indeed he is the only ally I have in pressing counsel of common sense on the PM. Smuts sees so clearly that Winston is irreplaceable that he may make an effort to persuade him to be sensible.' As quoted in B Gardner *Churchill in his time: A study in reputation 1939 - 1945* (1968) 229.

[2089] Lord Moran *Churchill: Taken from the diaries of Lord Moran* (1966) 317 as quoted in O Geyser *Jan Smuts and his international contemporaries* (2001) 95. During the Second World War, Churchill maintained: 'Smuts was magnificent in counsel. We could work together with the utmost ease.' M Gilbert *Road to victory: Winston S. Churchill, 1941 - 1945* (1986) 168 as quoted in O Geyser 'A Commonwealth prime minister: Jan Christiaan Smuts' (1991) 80 *The Round Table* 434. During the Second World War, King George VI on more than one occasion also revealed his confidence in Smuts' judgment. John Wheeler Bennett, the King's biographer, recounts that on one occasion, the King wrote to Churchill: 'I am alone here for dinner tonight, and if there is any possibility of Smuts and you joining me, it would give us all a very good opportunity of talking things over undisturbed.' J Wheeler Bennett *King George VI: His life and reign* (1958) 594 as quoted in *Ibid* 432.

[2090] JR Colville *Footprints in time: memories* (1984) 127 - 128 as quoted in O Geyser *Jan Smuts and his international contemporaries* (2001) 104 - 105. See also B Gardner *Churchill in his time: A study in reputation 1939 - 1945* (1968) 205.

[2091] Smuts made his third war-time visit to Britain from 21 April to the end of June of 1944. Smuts was included in the preparations for the D-Day landings, and he met with Eisenhower, Churchill, and the chief planners on 3 June to consider weather conditions. On 16 June, Churchill invited Smuts to accompany him to Normandy, where they visited Montgomery's headquarters near Bayeux. The press was asked to keep Smuts' presence in Normandy a secret, as it was felt that General De Gaulle would be offended that Smuts, and not he, had been invited to accompany Churchill. T Cameron *Jan Smuts: An illustrated biography* (1994) 155. See also K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 229.

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The six volumes of Churchill's *The Second World War* are replete with admiring references to Smuts, and Churchill also quoted at length from their correspondence.[2092] For example, on 21 September 1943, Churchill wrote to Eisenhower in Algiers:[2093]

> Field Marshal Smuts will be in Cairo Monday . . . and will be in your theatre about four days later on his way here. He possesses my entire confidence, and everything can be discussed with him with the utmost freedom. He will stay some months in London, taking up his full duties as a member of the British War Cabinet. He will carry great weight here with public opinion. I shall be grateful if he is treated with the utmost consideration. He is a magnificent man and one of my most cherished friends.

[2092] For example: 'Am most grateful for your cable. Please always give me your counsel, my old and valiant friend.' [Churchill to Smuts 9 June 1940 in WS Churchill *The Second World War vol II* (1950) 114]; 'I send you these personal notes in order to keep in closest contact with your thoughts, which ever weigh heavily with me.' [Churchill to Smuts 27 June 1940 in *Ibid* 176]; 'Most grateful for all your help, and above all for your surefooted opinion, which marches with our laboriously reached conclusions.' [Churchill to Smuts 12 January 1941 in WS Churchill *The Second World War vol III* (1950) 80] 'Will you tell Smuts how glad I should be if now he is so near he could come and do a month's work in the War Cabinet as of old.' [Churchill to Eden 9 March 1941 in *Ibid* 95]; 'I am, as usual, in close sympathy and agreement with your military outlook.' 'Most grateful for all your help, and above all for your surefooted opinion, which marches with our laboriously reached conclusions.' [Churchill to Smuts 16 May 1941 in *Ibid* 250]; 'As usual, I kept Smuts informed.' [*Ibid* 459]; 'All the above is for your most secret information.' [Churchill to Smuts 14 September 1941 in *Ibid* 459]; 'I will keep you informed.' [Churchill to Smuts 13 December 1941 in *Ibid* 562]; 'Whole position again fully reviewed with the Commanders-in-Chief and Smuts . . . Smuts, with all his wisdom, and from his separate angle of thought and fresh eye, had concurred.' [Churchill to Eden 7 March 1941 in *Ibid* 93, 94]; 'General Smuts was imperturbable. His mind moved majestically amid the vagaries of Fortune. No one knew better than he how to "meet with Triumph and Disaster/And to treat those two imposters just the same."' [WS Churchill *The Second World War vol IV* (1950) 334]; 'In order to fortify my own judgment I had urged General Smuts to come from South Africa to the scene, and he was already at the Embassy when I arrived. We spent the morning together, and I told him all our troubles and the voices that were open.' [*Ibid* 356 - 357]; 'All the next day, the 6th, I spent with Brooke and Smuts . . .' [*Ibid* 359]; "In all this I have the complete agreement of Smuts and CIGS.' [Churchill to Deputy Prime Minister 6/7 August 1942 in *Ibid* 361]; 'General Smuts was with us at home in these days, and it was a comfort to find out how close was our agreement.' [*Ibid* 493]; 'General Smuts telegraphed to me next day in terms which illustrate so well his breadth of vision.' [WS Churchill *The Second World War vol V* (1950) 376]; 'Most earnestly do I look forward to seeing you, and I rejoice that you will be at my side in momentous times.' [Churchill to Smuts 27 February 1944 in *Ibid* 378]; 'Smuts, who followed Greek fortunes attentively, also sent a prescient comment.' [*Ibid* 410]; 'Smuts, who had now returned to South Africa, sent a prescient and suggestive telegram.' [WS Churchill *The Second World War vol VI* (1950) 18]; 'At this time, I received some pregnant messages from Smuts, now back at the Cape.' [WS Churchill *The Second World War vol VI* (1950) 78]; Before going to sleep I dictated the following message to Smuts, with whom my correspondence was continuous . . .' [*Ibid* 92]; 'Of all the messages which reached me on my birthday, none was more movingly phrased or gave me more encouragement than yours, my old and trusted friend.' [Churchill to Smuts 3 December 1944 in *Ibid* 205]; 'It was a pleasure to hear at the same time from one on whose judgment and instinct in such matters I relied.' [*Ibid* 229]; 'I also received some wise advice from Smuts.' [*Ibid* 246]; 'Smuts, who was at San Francisco, and whom I had apprised of all, was in full accord with my mood and actions.' [*Ibid* 434];

[2093] Churchill to Eisenhower 21 September 1943 in WS Churchill *The Second World War vol V* (1950) 114.

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For several weeks in November of 1943, Smuts acted as *de facto* prime minister of Great Britain, by presiding over the meetings of the British War Cabinet during Churchill's absence in the Middle East.[2094]

It therefore comes as no surprise that, on the question of the Great Power veto in the Security Council, Smuts' views carried great weight with Churchill.

4. The veto

As set forth in Chapter 1 above, with regard to a new post-war organisation, the Great Powers proposed to ensure their continued ascendancy through their permanent seats on the Security Council and the right of veto - the latter being one of the principal distinguishing factors between the League and the United Nations. However, there existed intractable differences between the Great Powers regarding the veto to such an extent that it threatened to scuttle the Dumbarton Oaks Conference. The issue of the veto was so vital to the Big Three that they were willing to dissolve the conference - and jeopardise all their hopes for a new post-war organisation - rather than accept what they regarded as an

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[2094] The *Friedmann Papers*; see note 218 above. Friedmann describes this as '[a] wartime secret, unparalleled in British and Commonwealth history.' Any mention of it at the time was ruled out 'by censorship and later by official silence to protect the accepted position regarding the key post in the democratically political form of government in the British Isles.' Friedmann continues: 'For several weeks the man presiding over the British War Cabinet in the absence of Winston Churchill, who had left the country for vital war strategy talk with President Roosevelt and Marshal Stalin, was not a political leader selected by the electorate of Britain. True he was a Prime Minister, but not of the United Kingdom. He was the Prime Minister of South Africa, General Smuts. His occupancy of the chair temporarily vacated by Mr Churchill, while he was in the Middle East, took place for several weeks in November, 1943.' According to Friedman. that was the reason why Smuts extended his time in England. He arrived on 1 October 1943, and intended spending a month in the United Kingdom. However, Smuts stayed for more than eight weeks, eventually leaving for Pretoria on 4 December 1943. Friedmann writes: 'Soon after General Smuts arrived early October, SAPA's correspondent learned on good authority that Mr Churchill had passed to General Smuts several important war and post-war plans and problems, which had previously solely occupied the attention of the British Prime Minister as leader of the War Cabinet. Those duties have grown considerably since then - so much so that recently General Smuts had to apologise publicly for his inability to see his friends as often as he would have liked. He told a gathering of the Royal Empire Society when it was still a closely-guarded secret that Mr Churchill had left for his meetings with President Roosevelt and Marshal Stalin that "if I do not appear very much in public, or of I do not meet my friends as often as I should like to do, remember I am here on duty. I am a soldier in uniform and I am here to do my best to help us in this vast business in which we are engaged . . ." (General Smuts had already taken over Mr Churchill's duties at No 10).' Friedmann's information seems to correspond with Churchill's and Smuts' recorded travels at the time. Smuts did make his second war-time visit to London in October 1943. Smuts to SM Smuts 3 October 1943 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 453 n1. On 18 October 1943, in a secret telegram to his deputy, JH Homeyr, Smuts informed Hofmeyr that he might be detained in London until December for a meeting of Dominion Prime Ministers, and 'Churchill declines to let me return earlier . . .' Smuts to JH Hofmeyr 18 October 1943 in *Ibid* 454. On 11 November 1943, Smuts wrote to Hofmeyr: 'Everything has gone uncommonly well with my work and my reception has been very good. I think I have been helpful in regard to the larger questions of our future strategy which has been, and still continues to be, very difficult.' Smuts to JH Hofmeyr 11 November 1943 in *Ibid* 455. It is of course also well known that Churchill met with Roosevelt and Chiang Kai-shek at Cairo from 22 to 26 November 1943, and with Roosevelt and Stalin at Teheran from 28 November to 1 December 1943.

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unsatisfactory formula for its use.[2095] The most vexing issue was what to do when a permanent member of the Security Council was involved in a dispute. Should a Great Power be able to use its veto in such a case? Or should it be denied its usual right to prevent the Council from acting and be bound by the decision like any other nation would be?[2096]

There were supporters on both sides of the debate within the State Department and American delegation at Dumbarton Oaks.[2097] The British and the Soviets, on the other hand, were emphatic on this issue, even before arriving at Dumbarton Oaks. Cadogan presented the British view to the Americans on 14 August 1944: A Great Power should never be permitted to vote and exercise its veto when it was involved in a dispute before the Security Council.[2098] The Soviet position was equally fixed, but on the opposite side of the question. It refused to accept any limitation, under any circumstances, on the right of a Great Power to veto decisions of the Security Council, even when the Great Power itself was involved in a dispute.[2099]

[2095] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 183. For a penetrating analysis of the veto issue in all its controversy and complication, see RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990). See also generally E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 165; E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 29; EJ Hughes 'Winston Churchill and the formation of the United Nations Organization' (1974) 9 *Journal of Contemporary History* 190; N Bentwich & A Martin *A commentary on the Charter of the United Nations* (1951) xxii and further.

[2096] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 184.

[2097] *Ibid* 191.

[2098] *Ibid*. The British feared that if a Great Power involved in a dispute could vote it would have put itself on a very different footing from the rest of the world. *Ibid* 194. For Cadogen, the danger could not be overestimated; it was the 'biggest problem' that the delegates at Dumbarton Oaks would face. *Ibid*.

[2099] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 431. The Soviet pre-conference proposal did not in any way provide for deviation from the principle of Great Power unanimity, and their delegation at Dumbarton Oaks never wavered in its support of an unqualified veto. RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 191. Stalin viewed a Soviet-led Communist hegemony in Eastern Europe as his most important post-war objective, and he did not want to risk any interference from the new United Nations Organisation. *Ibid* 214, 215. As a Marxist-Leninist, Stalin saw only too clearly the isolation that awaited his nation in an organisation whose members were almost unanimously capitalist. As a Russian he expected his Western allies to take advantage of their overwhelming number of votes within the peacekeeping body as turn its authority against him. In the Soviet view, the Anglo-Americans had nothing to fear from abandoning unanimity because they could always count on each other, not to mention the French and the Chinese, to come to their defence in the Security Council. The Soviet leader saw an absolute veto as his 'one life preserver in a shark-infested capitalist sea' - and he clung to it tenaciously. To approve an organisation in which the Great Powers would not have an unlimited veto was worse than utopian; it was positively foolhardy. *Ibid* 216, 254. In sum, explains Kennedy, Stalin feared entrapment by the capitalist architects of the new world order. 'A triumvirate, or, if necessary, a five-state cabal of world powers, warily circling but respecting one another's stated interests,' would be acceptable. However, Stalin could never allow voting in the new forum to lead to common action against the Soviet Union. An unqualified was therefore essential. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 26.

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However, by the end of September of 1944, it seemed as if Churchill was reversing his position on the Great Power veto - by all accounts the most important issue of the conference.[2100] The first indication of this came on 25 September when Churchill forwarded to Washington a telegram that he had received from Smuts.[2101]

In general, Smuts was but a 'distant spectator' to the Dumbarton Oaks discussions.[2102] However, with regard to the issue of the veto, Smuts was not content merely to be an observer.[2103] Smuts considered the demands of the Soviet Union to be monstrous from a constitutional perspective, but he nevertheless advised Churchill to accept it as a matter of political expediency.[2104]

The Kremlin's attitude, wrote Smuts in a long letter to Churchill on 20 September 1944, was based on its concern for the Soviet Union's 'honour and standing . . . amongst her Allies;' on whether 'she is trusted and treated as an equal or whether she is still the pariah and the outcast.'[2105] This made the disagreement over the veto more than a mere difference of opinion: It may touch Russian *amour propre* and may induce an inferiority complex,[2106] thereby poisoning European relations with far-reaching results.'[2107]

Moreover, there was no way to avoid the realities of Soviet power. Smuts' greatest apprehension about the new post-war international organisation was that, '[s]hould a

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[2100] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 29.

[2101] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 226.

[2102] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429.

[2103] *Ibid* 431.

[2104] *Ibid*. In commenting on the Dumbarton Oaks proposals, Smuts stated with following with regard to the veto: 'There is . . . a serious difference with Russia over the voting, which has led to much searching correspondence in which I have taken a hand. I remain in great fear that Russia will not play and rely on her enormous strength in playing a lone hand. That may mean World War III and should be prevented at all costs.' Smuts to MC Gillett 5 October 1944 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 492.

[2105] Smuts to Churchill 20 September 1944 in WS Churchill *The Second World War vol VI* (1950) 160.

[2106] Smuts described Russia as 'a strange and difficult customer to deal with': 'There is always the air of reserve and mystery, with strange and unexpected outbursts which make one guess as to what is going on behind that bearish exterior. I suppose it is a case of infinite patience on our part.' Smuts to MC Gillett 5 October 1944 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 492.

[2107] Smuts to Churchill 20 September 1944 in WS Churchill *The Second World War vol VI* (1950) 160. In addition, Smuts considered, the Soviets were inevitably growing conscious of their newly won power, and awareness that was attested to by their unwillingness to compromise on the veto issue. This realisation might make them more grasping and dangerous, calling into question the nature of their future relations with Germany and Japan, 'and even France, not to mention lesser countries.' *Ibid* 160 - 161.

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World Organization be formed without Russia, she will become the power centre of another group. We shall then be heading towards a third World War.'[2108] But, if no such organisation was established, the victorious nations would all 'stand stultified before history.'[2109]

Smuts concluded that this created a 'very grave dilemma, and we must at all costs avoid the position into which we may be drifting.'[2110] In essence, Smuts considered it essential to pay a high price, in terms of constitutional principle, to ensure Russia's active participation in the United Nations.[2111]

Smuts also believed that the principle of unanimity among the Great Powers had much to recommend it, at least in the uncertain times of the immediate post-war period; certainly '[a] clash at the present juncture should be avoided at all costs.'[2112] Smuts advised that the question should be reconsidered in light of its far-reaching implications, and a *modus vivendi* found that could prevent 'a catastrophe of the first magnitude.'[2113]

In a personal minute dated 20 September - the very day of Smuts' telegram - the British prime minister expressed his agreement with Smuts' views and ordered them circulated within the War Cabinet.[2114] Churchill cabled Roosevelt on 3 October that he was

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[2108] *Ibid* 161.

[2109] *Ibid*.

[2110] *Ibid*.

[2111] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 431.

[2112] Smuts to Churchill 20 September 1944 in WS Churchill *The Second World War vol VI* (1950) 161. In the short run, unanimity could do little harm, the South African prime minister reasoned, and it might even serve to damper the rising ambitions of the Soviet Union. RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 227.

[2113] Smuts to Churchill 20 September 1944 in WS Churchill *The Second World War vol VI* (1950) 161.

[2114] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 431; RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 227. Whatever the merit of his position, Smuts' intervention clearly produced 'a strong effect upon Churchill.'*Ibid.*

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now 'pretty clear that the only hope is that the three powers are agreed.' Churchill added that it was 'with regret' that he had 'come to this conclusion contrary to my first thought.'[2115]

5. 'Peace unbacked by power remains a dream'

The *rationale* for Smuts' advice to Churchill with regard to the Great Power veto is clear from the views that Smuts expressed during the war with regard to the new post-war international organisation. Smuts spent a good deal of time during the war years discussing with the American banker, Thomas W Lamont, his erstwhile collaborator at the Peace Conference, Lord Cecil, and the Gilletts, the stamp that the new world organisations should take.[2116] However, he was anything but optimistic about the future.[2117] To Smuts, the League of Nations proved to be a 'heart-breaking disappointment.'[2118] The League

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[2115] *Ibid*. See also S Meisler *United Nations: The first fifty years* (1995) 12 - 13. Hildebrand also notes that an unlimited veto also recommended itself to the empire-minded Churchill as it would seem to safeguard, in the words of the Foreign Office, 'interests which we possess outstandingly as an Imperial power with far-flung and sometimes disputed possessions.' As quoted in RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 251. In Keith Hancock's opinion, there is no doubt that Smuts' intervention 'played some part in promoting the reappraisals and compromises of Yalta and, consequently, in bringing [the United Nations] to birth.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 431. See also WS Churchill *The Second World War vol VI* (1950) 183 - 184. Smuts' intervention came too late to facilitate agreement among the Big Three at Dumbarton Oaks. Thus, the matter of the veto was the most important issue that remained unresolved at the conclusion of the Dumbarton Oaks negotiations. See LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 9. On 7 October 1944, when the Dumbarton Oaks Conference ended, the unresolved issue of the veto represented a ticking time bomb at the heart of the entire venture, writes Mazower. M Mazower *Governing the world: The history of an idea* (2012) 207. The operation of the permanent member veto was one of the items discussed by the three heads of government at the Yalta Conference in the Crimea in 1945. E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 29; J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 14. The veto questions was raised acutely again at San Francisco. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 46. Alger Hiss, in his capacity as acting Secretary-General, identified the veto power of the five permanent members of the Security Council as the most difficult issue at San Francisco. Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 40. On 4 June 1945, Smuts wrote to his wife from the San Francisco Conference: 'Our greatest difficulty now is with the Russians who are making proposals about the voting of the great powers (the veto) to which the rest of us cannot agree.' Smuts feared that the 'Russian attitude' was so 'unreasonable and dangerous that it could easily make a fiasco of the new organization.' Smuts to SM Smuts 4 June 1945 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 540. The next day, 5 June, Smuts stated: 'Russia's attitude is difficult to understand, so different from Yalta and the other conference exchanges.' At that time, Smuts believed 'the conference itself [to be] in danger,' but he was doing his 'level best to prevent a crisis.' 'I mean well by Russia,' Smuts added, but I am much afraid of her.' Smuts to MC Gillett 5 June 1945 in *Ibid* 542.

[2116] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 427. Smuts was more apt than Churchill to 'brood in the middle of the war about its sequel.' Smuts once told Eden that he realised how difficult the Foreign Secretary's position was, 'because W's mind had a stop in it at the end of the war,' and he, Smuts, quite understood that Eden must have a foreign policy on which to work with Allies at home, with Americans and Russians. D Dilks *Churchill and company: Allies and rivals in war and peace* (2012) 94.

[2117] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53.

[2118] Smuts to MC Gillett 24 January 1940 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 210.

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was viewed as the 'utmost that was practicable' at the time of its creation. However, it has 'remained an idea, a light on the horizon which has not been reached.'[2119]

During the early stages of the war, Smuts stated that he could not yet think 'beyond the League,'[2120] with 'some amendments which will fit it more closely to the realism of this world.'[2121] In January 1940, Smuts described himself as, 'fundamentally a liberal with a pull towards spiritual and religious values.'[2122] However, it could not be denied that liberalism had failed.[2123] In the inter-war years, and especially during the course of the Second World War, Smuts became far more pragmatic than idealistic in his outlook on

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[2119] *Ibid*. In exchanging thoughts over the post-war future with Lord Cecil, Smuts emphasised that, whatever the future held, the international humanitarian work which the League initiated and that was still continuing, 'will surely stand as once of the great historic human advances' that would 'remain an abiding possession of our future civilization.' However, the League's failure in 'its work for world peace' pointed to the 'imperative necessity for new, more effective machinery to provide against the periodic recurrence of war.' Such machinery . . . in the new organization of the United Nations . . . indeed *must* be created if the human race is to survive.' Smuts to Lord Cecil 10 November 1942 in *Ibid* 391 (Smuts' emphasis). Smuts believed that it would be possible to build the new post-war international organisation 'on the foundation laid twenty-two years ago.' In contrast to the League, this new effort would no longer be 'merely experimental,' but rather 'an assured and reliable defence for world peace.' Smuts concluded: 'The brilliant League experiment and the bitter experience of the last twenty-five years place us in a strong position to build better next time. Let us not despair of the the future . . . The Experiment will yet be a success.' *Ibid*.

[2120] During the early stages of the war, Smuts was at a loss with regard to the post-war settlement. In January 1940, he wrote to Margaret Gillett: 'You ask what I think of a future settlement. I have thought and thought and always come to a standstill. Will there be a temper for a decent peace at the end of this horrible business? . . . Can there be institutional change where there is no change of the spirit? Can we build effectively except from the depths of the human spirit?' Smuts to MC Gillett 24 January 1940 in *Ibid* 210. And yet, 'some constitutional form or mechanism must accompany the inner change of spirit.' Smuts scoffed at the talk of a 'universal federation,' which he dismissed as a 'Utopian ideal' that was noting more than 'a form of escapism.' How could a universal federation 'a practical issue for the world,' when it proved impossible for the British Empire? *Ibid*. The central problem of the post-war world was 'a society of nations held together in an association which will have authority to maintain peace . . .' 'We failed to solve it in 1919,' Smuts stated to Patrick Duncan, 'It *must* be solved next time.' When he turned his attention to the problem of 'peace organization' in 1918, the solution seemed to Smuts 'at least in principle, fairly simple,' however difficult it might prove to 'make it work in practice.' However, with the failure of the League and with the 'far more difficult situation likely to face us at the end of this war,' Smuts declared, 'I look into a glass darkly, and I do so with the deepest doubts and hesitations.' Smuts to P Duncan 16 September 1940 in *Ibid* 252 - 253. Gardner quotes Smuts as stating in 1941: 'I am not worried about the war; it will be difficult but we shall win it; it is after the war that worries me. It will take years and years of patience, courage, and faith.' B Gardner *Churchill in his time: A study in reputation 1939 - 1945* (1968) 140.

[2121] Smuts to MC Gillett 24 January 1940 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 210. Smuts agreed with Lamont that, since there was no resurrection of the dead except in the realm of religion, they would not see again its old form 'the dear friend (I had almost said child) the League of Nations.' Smuts to TW Lamont 14 August 1942 in *Ibid* 380. The restoration of the League would be impossible. The United States never became a member of the League, and the Soviet Union was expelled. Both these great powers desired to wipe the slate clean and to create a new post-war international organisation with a new name. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429. The new organisation, Smuts declared, 'will be the United Nations - a good name, too, corresponding to the United States.' Smuts to TW Lamont 14 August 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 380. Hancock comments that the name was the product of Roosevelt's 'flair of idealistic rhetoric.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429. On the name of the new post-war international organisation, see Chapter 8 (4) below.

[2122] Smuts to MC Gillett 24 January 1940 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 210.

[2123] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 209.

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post-war international organisation.[2124] For example, in 1919, Smuts had been in favour of disarmament, but by 1945 he was not.[2125] Smuts admitted to his Quaker friend that he no longer possessed the 'ardent faith' that had moved him in December 1918 when he wrote

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[2124] In July of 1944, shortly before the Dumbarton Oaks discussions were to start, Smuts wrote: 'I find the position for real peace infinitely more difficult than in 1919 . . . I am nonplussed by the peace problems which confront the world at the end of this war.' Smuts to MC Gillett 26 July 1944 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 486. In August of 1944, Smuts asked rhetorically in a letter to Margaret Gillett: 'Shall we have learnt our lesson? And are we certain what that lesson is?' He continued: 'Will nationalism - which began so beneficently in the fight for freedom - continue to denigrate into a force of evil worse that the tyrannies and imperialisms of the past?' Unless a peace could be made that confined nationalism 'to a mere cultural level,' and 'robs it of its racial poison and imperialistic ambition,' war would continue to destroy the civilisation which the past had erected. Smuts to MC Gillett 7 August 1944 in *Ibid* 488. Smuts was 'appalled by the prospect' of gaming peace after this war, 'and by fear that once again we may fail - in insight, in magnanimity and in the courage called for in such a situation.' 'May God have mercy on our stupidity and weakness,' Smuts concluded, 'and give us strength of heart and mind.' *Ibid*. In November 1944, Smuts described the 'making of blueprints' for the 'new order' - '[t]he better world' . . . all the 'visions which people see in the skies of the future - as a 'horrid undertaking.' To Smuts it seemed that humanity was again living in the era of Godwin and Shelley in the early 19th century, when people believed in 'the perfectibility of human nature and thought the old order could be sloughed off like a skin and hey presto! the new world of heart's desire would dawn.' Smuts to MC Gillett 22 November 1944 in *Ibid* 509. 'We poor miserable public men' had to prepare for all this and to cater to 'this public anticipation.' 'The *practical* problems and tasks were so enormous,' Smuts stated, 'that one has really no time for this artistry of the future.' That Smuts had become extremely war-weary is clear: 'How can one who desires to face facts and realities be patient with all this pining after what is not and may never be. Look at the unchanged human nature, look at the cost in an impoverished war-exhausted world.' *Ibid*. On 28 December 1944, Smuts wrote to Margaret Gillett: 'I feel tired in more ways than one, though I do my best not to look it! The best is to present a fair front to the world; it may mean half the battle, and is in any case good propaganda. But right inside I feel the strain and the discord and the pain of this dear old world. The mood will pass and the sun will shine again.' Smuts to MC Gillett 28 December 1944 in *Ibid* 517. In November of 1945, Smuts wrote to Margaret Gillett: 'I am worked to death and have never felt cheaper while still preserving the deceptive appearance of vitality and alertness. My political troubles are very considerable.' Smuts to MC Gillett 2 November 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 19. In wishing Margaret Gillett best wishes for the New Year, on 28 December 1944, Smuts stated: 'We may say of 1944 what Shelley said of life - "The world is weary of the past, O may it die and rest at last."' For Smuts the pattern of world affairs was increasingly becoming 'disillusioning, almost frightening - not so much for the war as for the peace to follow.' Smuts to MC Gillett 28 December 1944 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 517. 'We are so much on a knife edge as regards the future, and false step may mean disaster.' *Ibid*. '[N]ow we are once more fighting a great war for "liberty,"' Smuts said. He believed it was impossible to 'rekindle that great light.' 'Is anything ever resuscitated from eclipse?' Smuts asked. Smuts confessed that he did not yet 'discern the lineaments of the new liberty,' much as he had spoken about it. However, it had to be 'something different, something deeper and and more complex' than the liberty of the 19th century. Holism did not seem to provide the answer. Holism was 'not a theory of liberty alone but of something more vital and organic, where units are not free but members of one another in the whole.' *Ibid* 518. In his pessimistic mood, Smuts said to Lamont: 'The Atlantic Charter will go the way of Wilson's Fourteen Points. And a generation hence people will once more be wondering at the peacemakers of 1945 - 6!' The 'new problem' would be far more difficult to solve than that of 1919, because, Smuts argued, Nazism has been a far more awful scourge than Prussianism.' '[F]or me a big ? make hangs over the future,' Smuts wrote. He concluded his letter: 'I am . . . looking into an obscure world beyond.' Smuts to TW Lamont 4 January 1945 in *Ibid* 520.

[2125] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 211. Contrary to his position at the Paris Peace Conference, on the day before his departure from San Francisco, Smuts said to the press: 'It is a dangerous world in which we live, Let us not disarm again. We must be prepared for any eventuality.' As quoted in JC Smuts *Jan Christian Smuts: A biography* (1952) 393.

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'that pamphlet' in the upstairs bedroom of their home in Oxford.[2126] He described himself as 'a sadder, not a wiser man.'[2127]

In an atmosphere of unrestrained brutality created by Nazism and Bolshevism, the League - as a body of reasonable nations prepared to dispel disagreement by discussion - was no longer feasible.[2128] In addressing both Houses of Parliament at the London Guildhall on 21 October 1942, Smuts stated:[2129]

> Our ideas . . . twenty-two years ago were much too vague and crude, and the same time much too ambitious, with the result that when they came to be tested by hard experience they proved wanting, and their failure helped to contribute to the present conflict. With that experience before us we ought this time to hammer our something more clear, definite and practical.[2130]

In a speech to the United Kingdom branch of the Empire Parliamentary Association in London on 25 November 1943, Smuts ascribed the failure of the League to a lack of power and leadership.[2131] The peacemakers at Paris shunned the 'old system of Europe' - the balance of power.[2132] Instead, they opted for a 'universal all-in system of security . . . and of idealism' with regard to the League of Nations.[2133]

However, that led to the opposite danger. As the Second World War had clearly shown, idealism was not enough. Universality was not the solution for the problem of world security. All of humankind's high aspirations for a better world stood 'no ghost of a

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[2126] Smuts to MC Gillett 24 January 1940 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 210.

[2127] *Ibid*.

[2128] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 211. The failure of League sanctions against Italy in 1935 and 1936, accompanied by the rearmament of Germany, and particularly, by the remilitarisation of the Rhineland in 1936, made it morally certain that the peace-loving peoples of the world, unless they were to surrender to the forces of aggression without resistance, would sooner or later have to take up the challenge again, with bloodshed and wanton destruction as the inevitable consequences. The challenge was accepted in September 1939, and by the end of 1941, the war had spread to all continents and all the major powers of the world were engaged. LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 4.

[2129] JC Smuts *Toward a better world* (1944) 262.

[2130] On 28 March 1938, Smuts said: "To-day conditions and tempers give the League no chance. But it is a great vision, an ideal which always has its value even in the practical affairs of men, and even in the most untoward circumstances. After all the League was only following the ideal which was incorporated into the practice of the British Commonwealth. But I admits circumstances have been too hard for it, and we shall have to go slow with any form of idealism in the dangerous forces of the world to-day.' As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 126.

[2131] This speech is reproduced *verbatim* under the heading 'Speech (1943)' in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 456 - 469.

[2132] *Ibid* 458.

[2133] *Ibid* 458 - 459.

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chance' unless the peacemakers this time around kept well in their minds the 'fundamental factor' of power.[2134] To Smuts' mind, this was the cardinal lesson of the war: 'Peace unbacked by power remains a dream.'[2135]

Because of the principle of equality in the League of Nations, '[w]hat was everybody's business in the end proved to be nobody's business.'[2136] Each state looked to every other state to take the lead, and 'the aggressors got away with it . . . it all went to pieces in the hesitation and confusion.'[2137] Smuts did not have as yet any clear conception of the structure of the new organisation,[2138] but of one thing he was certain: There was not going to be a 'council of gate-crashers as in the League.'[2139]

The bitter lesson from the League experiment was that, if the future security of the world is left 'merely to loose arrangements and to aspirations for a peaceful world, we shall be lost.'[2140] In order the preserve peace in future, leadership and power had to assume their proper place in the new organisation.[2141] Smuts believed that this could be effectively

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[2134] *Ibid* 459. See also S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53.

[2135] JC Smuts 'Speech (1943)' in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 459. Much earlier during the war, in a radio broadcast on 21 July 1940, Smuts had reminded the people of the United States and the United Kingdom that the lesson from the failure of the League was that discipline and organization must go hand in hand with freedom. In Smuts' view the League largely failed because of 'the absence of central control which could harmonize the freedom of each with the proper functioning of the whole of human society.' The goal therefore was to establish a society of nations which would 'supply this defect,' and which would possess a central organisation equipped with the necessary authority and powers 'to supervise the common concerns of mankind.' 'As between man and man there shall be social justice,' Smuts stated, 'as between nation and nation there shall be the rule of law, the absence of force and violence, and the maintenance of peace.' This radio address is reproduced *verbatim* under the heading 'Speech 1940' in *Ibid* 248.

[2136] JC Smuts 'Speech (1943) in J van der Poel (eds) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 459.

[2137] *Ibid* 460.

[2138] Smuts described the structure rather vaguely: 'There will be a nucleus, an outer circle, and a fringe round that, signifying the various grades of responsibility and power.' Smuts to TW Lamont 14 August 1942 in *Ibid* 380.

[2139] *Ibid*. Smuts did not consider the new institutions by themselves a sufficient response to the challenges now confronting the human race. 'What troubles me more, Smuts stated to Lamont, 'is the point of the spirit and outlook which will animate the new machine. All will depend on that. The spirit of the old League was fatal to its success.' *Ibid*. See also WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 427.

[2140] JC Smuts 'Speech (1943)' in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 459.

[2141] *Ibid*. Smuts adopted the argument that, in the words of Kennedy,'realists love and consensualists hate,' that international organisations work effectively only when the Great Powers, motivated by their own interests, are agreed to take action. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 21.

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achieved by 'giving a proper place to the three great powers that are now at the head of our United Nations':[2142]

> Great Britain, the United States and Russia now form the trinity at the head of the United Nations fighting the cause for humanity. And as it is in war, so will it have to be in peace.[2143]

It would simply not be wise to look to an Anglo-American union or axis as the solution for the future: 'We shall have to stick to the trinity . . . we must make up our minds to that as the solution for the present and the near foreseeable future.'[2144] The single most important principle in creating the new international organisation, was to ensure that the leadership remained firmly in the hands of 'this great trinity of powers' and that they be responsible 'in the first instance for the maintenance of security and . . . the preservation of world peace.'[2145]

Smuts also expressed to Trygve Lie, who would become the first Secretary-General of the United Nations, his conviction that the great powers would have 'to take the lead

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[2142] JC Smuts 'Speech (1943)' in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 459. See also S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53. In this regard, Luard comments that Although the leaders of the great powers held fervent individual views on the nature and structure of the post-war organisation, they had all learned a lesson from the League and were united in their belief that one of the reasons for the League's failure was the absence of some of the great powers. If the new organisation was to succeed the great powers had to occupy the predominant place within it. E Luard *A history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 18 - 19. Mazower comments that the United Nations enjoyed one significant advantage over its predecessor - the support of the world's major powers. M Mazower *Governing the world: The history of an idea* (2012) 211. The truth was that the United Nations was above all a means of keeping the wartime coalition of the Great Powers intact at whatever cost was necessary to avoid the fate of its predecessor. *Ibid* 212.

[2143] In his speech to the United Kingdom branch of the Empire Parliamentary Association in London on 25 November 1943, Smuts stated: 'We have moved into a strange world, a world such as has not been seen for hundreds of years; perhaps not for a thousand years. Europe is completely changing. The old Europe which we have known, into which we were born, and in which we have taken our vital interest as our mother-continent, has gone.' JC Smuts 'Speech (1943)' in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 460. Smuts' assessment of the fundamental facts of the geopolitical situation in Europe after the war was as follows: Three of the five great powers in Europe - France, Italy, and Germany - would have disappeared. Only Great Britain and Russia would be left. Although Russia was an 'upstart power,' there was no denying that, especially with the others 'down and out,' she was 'the new colossus' that bestrode Europe, the 'mistress of the Continent.' This was a fact to be viewed 'coldly and objectively.' *Ibid* 461. The three great powers - 'the trinity' - at the conclusion of the war would be: 'Russia, the colossus of Europe, Great Britain with her feet in all continents, but crippled materially . . . in Europe; and the United States of America with enormous assets, with wealth and resources and potentialities of power without measure.' *Ibid* 462.

[2144] *Ibid* 463.

[2145] *Ibid* 459.

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and assume a heavier responsibility' than they were prepared to undertake after the Great War.'[2146]

In this regard, Smuts' preponderant concern was that the potentially isolationist Great Powers - the United States[2147] and the Soviet Union[2148] - 'had to be kept inside the camp and not allowed to bolt into distant mistrust an obstructionism.'[2149] The active participation of the Big Three was for Smuts the *sine qua non* of the success of the new international organisation. Failure to achieve this proved to be the Achilles heel of the

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[2146] Smuts to T Lie 12 November 1942 in *Ibid* 392. This was 'in effect foreshadowed in the Atlantic Charter.' Roosevelt had a similar conception. The American president believed that 'the four policemen' - nationalist China added to Smuts' 'trinity of powers' - would be able to keep the peace and order in the world. Of course, when France also became a permanent member of the Security Council, the policemen became five. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 430.

[2147] From its inception, the League had suffered a fatal weakness and disappointment through the defection of the United States, whose president had been one of the authors of the Covenant. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 12. The permanent seat reserved for the United States was left unoccupied throughout the League's short life span. Edwin L. James, present at the first Council meeting of the League, commented as follows on the absence of the United States: 'As the afternoon wore on, the sun which streamed across the Seine and through the windows cast a shadow of the empty chair across the table. The shadow lengthened that day and the days that followed until the League died.' This comment by James was apparently quoted in his obituary, *New York Times* (4 December 1951) as quoted in J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 7. Alger Hiss, a staff member of the State Department, explained: '[I]t is true that in the early days of the League and up until World War II broke out, the State Department was so afraid of being identified with the League since the Senate had rejected the league, that we did not have a regular observer . . . the League was hush-hush . . .' Yale-UN Oral History Interview with Alger Hiss (11 October 1990) 41.

[2148] The more firmly Russia got into the saddle now, Smuts told Churchill in the autumn of 1944, the further she would ride in future. D Dilks *Churchill and company: Allies and rivals in war and peace* (2012) 111. Smuts believed that the problems facing the post-war world were worse than anything experienced before. And, Russia would be impossible to control unless it was part of the United Nations. T Cameron *Jan Smuts: An illustrated biography* (1994) 158.

[2149] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 27. All was not serene in the Allied camp, even when engaged in a desperate struggle with the enemy at their doorstep. And, if this was the case when ongoing war was compelling a choice between cooperation or disaster, what would happen when the compulsion disappeared - when the Great Powers would have to agree what constituted a threat to peace before they could agree on what had to be done about it? DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 214 - 215. The key question was the way in which British power would accommodate the rise of the United States, which the war had turned away from isolationism, and the Soviet Union, which could no longer be treated as a renegade nation. Smuts believed that, in a new global order, an international organisation that incorporated these two great powers, would be essential for global peace. His view was also that the commonwealth would be better protected by being part of a higher-level international organisation that would bring in the two new titans, the United States and the Soviet Union. J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 454, 457. By 1945, British policy makers were also most concerned about the need to mesh the 'somewhat wayward' United States and Soviet Union into a web of international obligations. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 26.

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League.[2150] Leif Egeland, South Africa's Ambassador in Stockholm, who accompanied Smuts to San Francisco, commented many years later:[2151]

> Smuts was concerned less with the details of the proposed Charter and more with the overriding need to the keep the Big Three sufficiently in agreement to ensure that some sort of charter could operate during the transitional and critical years ahead.

In his address to the 6th Plenary Session of the San Francisco Conference on 1 May 1945, Smuts stated that the Dumbarton Oaks proposals recognised, in a 'spirit of realism,' that a new responsibility for peace must rest on the Great Powers.'[2152]

Smuts believed that the smaller nations would willingly accept the primacy of the trinity in issues of international peace and security, even if it 'may appear to affect their technical sovereign rights.'[2153] There was no help for it. The modern developments of war, Smuts wrote to Lie, have brought about a 'far-reaching change in our old-time concepts of neutrality and sovereignty.'[2154] And, in shaping humanity's future course, resort to the old text books would not do. The 'hard and cruel lessons . . . in this era of world war' was the true teacher.[2155] This lesson was not lost on the smaller powers in western Europe. Smuts was convinced that they would readily 'make some surrender in exchange for real security.'[2156]

[2150] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 59.

[2151] L Egeland *Bridges of understanding: A personal record in teaching, law, politics and diplomacy* (1977) 168 - 169 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 182.

[2152] 'Address by Field Marshal Jan Christian Smuts, prime minister of the Union of South Africa and chairman of the South African delegation at the sixth plenary session of the Conference' (1 May 1945) No 34 3 in *United Nations Archive* S0596/Box 7/File 13.

[2153] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 430; Smuts to T Lie 12 November 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 392.

[2154] *Ibid*.

[2155] *Ibid*.

[2156] *Ibid*. Smuts was even more emphatic to Margaret Gillett: 'I wonder whether we shall cross the Rubicon this time and come to grips with isolationism which is the disease from which our civilization is suffering and from which it may die. Unless the bonds of the sovereign state can be burst and human society be linked up in a world-wide brotherhood, there is little chance of survival in a world where science has perfected all the weapons of destruction.' Smuts to MC Gillett 17 May 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 431. Hancock remarks that Smuts must surely have been surprised by the tenacity with which Australia and other small nations asserted their rights at San Francisco. Smuts' 'own government held itself aloof from such contentions.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 430.

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To Smuts, the Great Power veto represented the maximum that could be achieved considering the *realpolitik* of the moment.[2157] The Great Power veto might weaken certain universalistic principles and compromise the effective response to possible transgression of international law when a Great Power was involved, but that was better than no security system at all.[2158] He defended the veto against all comers, including his parliamentary opposition.'[2159]

At the San Francisco Conference, Smuts diverged from many of his fellow small power delegates in his defence of the veto. Referring to the absence of the United States as one of the main reasons for the failure of the League of Nations, he feared that similar abstentions or later disagreements amongst the Great Powers might lead to the failure of the United Nations.[2160] Smuts concluded: 'I cannot say that the Yalta recommendation is too heavy a price to pay for the new attempt to eliminate war from our human affairs.'[2161]

The reality was that 'Great Powers would do what Great Powers choose to do.'[2162] However, Smuts hoped that the harmonious and mutually beneficial workings of a new international structure, in addition to improved cooperation, reinforced by the memories of two bloody conflicts, would be sufficient to keep all states from crossing the dreaded boundary between peace and war.[2163]

[2157] However, it can also not be discounted that the Great Power veto, in addition to being a temporary expedient to prevent the Soviet Union from forming its own organisation, also served the narrow, political self-interests of Smuts and Churchill. It is clear that, from the outset, Smuts intended to rely on the responsibility of one or more permanent members of the Security Council on issues of importance to South Africa. The reasons, argue Shearar, are clear: in the Security Council the permanent members were in command; in the General Assembly a majority could be achieved by the votes of the smaller nations, at least in theory. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 20. '[Smuts] was blinkered by his faith in the Commonwealth,' states Shearar, and presumably believed that, with the United Kingdom as its motive force, a united commonwealth would have a veto in the Security Council. *Ibid*. Robert Hildebrand notes that an unlimited veto also recommended itself to the empire-minded Churchill, as it would seem to safeguard, in the words of the Foreign Office, 'interests which we possess outstandingly as an Imperial power with far-flung and sometimes disputed possessions.' As quoted in RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 251.

[2158] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 28.

[2159] D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 185.

[2160] 'Address by Field Marshal Jan Christian Smuts, prime minister of the Union of South Africa and chairman of the South African delegation at the sixth plenary session of the Conference' (1 May 1945) No 34 4 in *United Nations Archive* S0596/Box 7/File 13.

[2161] *Ibid*; also as *verbatim* set forth in JE Harley *Documentary textbook of the United Nations* (1947) 443.

[2162] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 30.

[2163] See generally *Ibid*.

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6. Smuts at San Francisco

Early in 1945, invitations to attend the United Nations Conference on International Organization (the 'San Francisco Conference') were issued by the Government of the United States, in the names of the four Sponsoring Governments,[2164] to 46 Allied governments.[2165]

In 1943, Smuts described the prospect of making peace at the end of the Second World War, as a 'baffling' and 'appalling,' 'the hardest task that could be set our poor human statesmanship.'[2166] It might prove to be a 'superhuman labour,' and one where one could only pray the Griqua prayer. Besides, 'I failed miserably' 24 years earlier, he reminded Margaret Gillett, only to quickly add, 'I doubt whether I could have done much at Paris where I was not in a prominent position and the real reign of power were held by the hands.'[2167]

Since that time, he has 'come to be looked upon as one of the elder statesmen and one to expect much from.[2168] 'I have heard quite responsible people say,' Smuts confided in his friend, 'that they pin their faith on me and expect me to be one of the main hopes of a good peace.'[2169] Early in 1945, a rumour circulated that Smuts would be president of the San Francisco Conference.[2170] Smuts did not know the origin of the 'ridiculous rumour,' and he dismissed it as 'preposterous.'[2171] His assessment was coldly pragmatic: 'Russia does not like me, France distrusts me, even in British circles there is divided opinion, and South Africa is too small fry for such exaltation.'[2172]

[2164] The United States, the Republic of China, the United Kingdom and the Soviet Union

[2165] LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 10. The Charter of this new body was drafted between 25 April and 26 June 1945. CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 333. On the San Francisco Conference generally, see M Waters (ed) *The United Nations: International organisation and administration* (1967) 10 and further; O Spijkers 'The United Nations, the evolution of global values and international law' PhD thesis, Leiden University, 2011 63.

[2166] Smuts to MC Gillett 4 July 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 438.

[2167] *Ibid*.

[2168] *Ibid*.

[2169] *Ibid*.

[2170] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 428; T Cameron *Jan Smuts: An illustrated biography* (1994) 157.

[2171] Smuts to MC Gillett 4 March 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 526.

[2172] *Ibid*. See also WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 428.

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Indeed, it was only his 'sense of duty' that would take him to San Francisco at all, at a time he was 'badly wanted in South Africa.'[2173] Smuts believed that he should be at San Francisco in the event he was 'needed as one of those who remember 1919': 'Issues may be raised where I could speak with some effect because of my past experience.'[2174] Saul Dubow points out that Smuts also had South Africa's domestic interests in mind, in particular the imperative to use its favourable wartime reputation to bank the country's political capital and secure its position as guarantor of western interests in Africa.[2175]

Smuts also foresaw the likelihood that when the Conference convened, 'the play will already have been fully written and only the theatrical performance will take place' on the San Francisco stage.[2176] With this statement, Smuts put his finger on the principal difference in the process of drafting the Covenant of the League of Nations and that of drafting the Charter of the United Nations.[2177]

By the end of the Great War, very little preparatory work had been done with regard to the League.[2178] This opened the way for Smuts' individual *'tour de force*.'[2179] With scant precedent to draw from, except for the Phillimore report, in *A practical suggestion* Smuts

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[2173] Smuts to MC Gillett 4 March 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 526 - 527. See also S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53. Tothill questions why Smuts went to San Francisco at all. His government was a 'one man show,' with his cabinet running to him 'for their decisions.' Louis Esselen as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 182. He could not absent himself at all, let alone for an extended period, without an adverse effect on the formulation and implementation of policy.

[2174] Smuts to MC Gillett 4 March 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 527. Mazower states that Smuts was one of the oldest delegates at the Conference. He also had the unique distinction of being centrally involved in setting up League. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 28.

[2175] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 54. Hyslop writes in this regard that, participating in the global politics of the war, Smuts envisaged South Africa as using the leverage it won in conflict within the British Empire to reconfigure the whole Southern African region around itself. Military effectiveness would be parlayed into political power within the commonwealth and the United Nations. J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 459.

[2176] Smuts to MC Gillett 4 March 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 527; WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 428. See also S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 53; CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 333.

[2177] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 428 - 429.

[2178] *Ibid* 429.

[2179] *Ibid*.

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elucidated and expounded the foundational objectives, organs, and procedure for a league of nations.[2180] Twenty five years later, the circumstances were entirely different:[2181]

> Two years if not more before the Second World War ended the expert and semi-expert participators in the task of charter-making could be numbered by hundreds or even by thousands. Washington, in particular, was a great ant-hill of busy workers scurrying around with pieces of paper to pile upon the ever rising mind of typescript and print dedicated to 'the establishment of a wider and permanent system of general security.'[2182]

In these endeavours, which culminated in the Dumbarton Oaks Proposals in November of 1944, states Keith Hancock, Smuts was but a 'distant spectator.'[2183] However, although Smuts may not have physically participated in the Dumbarton Oaks discussions, he nonetheless maintained a ubiquitous presence through his ideas.

Smuts perceived the Dumbarton Oaks Proposals to be the embodiment of Jean-Baptiste Karr's aphorism, 'the more things change, the more they stay the same.'[2184] It was clear to Smuts that, except for their 'trivial variations in title,' the institutions that emerged from the Dumbarton Oaks discussion were based upon the fundamental tripartite structure that he pioneered with regard to the the League in *A practical suggestion* - legislature, executive, and governing council.[2185]

[2180] Hancock describes *A practical suggestion* as 'the brilliant state paper.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429.

[2181] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429. Russell states: 'Probably no other major governmental policy has ever been the product of so many minds as the American proposals for an international organization.' RB Russell *A history of the United Nations Charter: The role of the United States, 1940 - 1945* (1958) 215.

[2182] Cockram also comments that Smuts, 'did not play anything like so significant a part before or at the Conference as he had done before and at Versailles.' B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 6. Borgwardt shows that the reliance on professional expertise was intended to stand in stark contrast to the proceedings of the Paris peace conference in 1919. The view of the Paris conference in the popular imagination of 1940s America was that of 'cynical politicians and amateurish idealists' who based their decisions on 'naked power politics or pious utopian aspirations rather than on a dispassionate analysis of the facts.' E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 143.

[2183] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429. According to Mazower, although Smuts was on the margin of these developments, he did follow them carefully. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 59.

[2184] Despite the Great Powers' pledged intention to wipe the slate clean and to create a new organisation with a new name, they apparently found it easier to change names than to change institutions: Covenant became Charter, Council became Security Council, Assembly became General Assembly, and Permanent Court of International Justice became International Court of Justice. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429.

[2185] *Ibid*; M Mazower *Governing the world: The history of an idea* (2012) 211 - 212. See generally Chapter 3 (2.2) above.

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The Dumbarton Oaks Proposals in many other respects also simply continued the ongoing League experiment.[2186] However, Smuts did not find any consolation in this conclusion. The League had suffered ruination. If the United Nations were to escape the same fate, the shortcomings of the Covenant would have to be rectified in the new Charter.[2187]

When the Conference opened at the Opera House in San Francisco on 25 April 1945, with Edward Stettinius, the Secretary of State of the United States, in the chair,[2188] '[i]dealism abounded.'[2189] This was epitomised, in the words of one delegate, by the person of South Africa's elderly prime minister:[2190]

> The American made much play of the hopes of mankind and did it sincerely but one delegate who made a clearer and stronger impression as a visionary was Smuts of South Africa. He appeared usually in military uniform and his keen bony face, like an eagle on a peak of rock, and the knowledge that he had fought the British in the Boer War as well as fighting the common enemy in two Great Wars made him a romantic figure. He had an air of apostleship about him and a loftiness and, whatever the truth may be, he looked and sounded more like a prophet and less like a politician . . . South Africa was not a bad name in those days.

[2186] M Mazower *Governing the world: The history of an idea* (2012) 212.

[2187] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 429. Smuts did, however, find one consolation in the Dumbarton Oaks Proposals: 'The new scheme worked out at Dumbarton Oaks looks very much like the old League,' he declared, 'but with more responsibility on the Big Three for security - as it should be.' Smuts to MC Gillett 5 October 1944 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 492. Smuts saw that the Dumbarton Oaks proposals recognised the existence of power, basing its proposals for post-war security on the unanimity of the possessors of power. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 188.

[2188] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 40; CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 336. Jannie Smuts, who accompanied his father to San Francisco, recorded the scene thus: 'The War Memorial Hall was crowed with 3,300 people. Twelve hundred of these were delegates, and two hundred were press photographers and reporters. The flags of the nations draped the stage and searchlights turned the atmosphere into a scorched inferno. To render the occasion still more bizarre almost unlimited latitude was allowed the news-crazy press representatives . . . In the hall itself was gathered about the most cosmopolitan medley of humanity the world had ever seen. There were the Nordics of Western Europe. There were the Latins and mixed extractions of the twenty South American states. There were the Negroes of Liberia, the Mongolians of the East, and the Arab types of Egypt. There was Bedouin-like Prince Feisal of Saudi Arabia with his quaint headdress.' JC Smuts *Jan Christian Smuts: A biography* (1952) 382. Virginia Gildersleeve states that never before had a great international conference considering matters of the gravest import taken place in such a 'blinding blaze of publicity.' This was required by the '*American* demands of the moment.' According to Gildersleeve, it was offensive to many of her 'foreign colleagues,' and 'rather disconcerting to this of us who were trying to do some hard thinking.' VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 316 (Gildersleeve's emphasis).

[2189] D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 177.

[2190] PMC Hasluck *Diplomatic witness: Australian foreign affairs 1941 - 1947* (1980) 199 - 200 as quoted in *Ibid*.

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San Francisco was the last international gathering that Smuts attended with his reputations as a world statesman 'untarnished by the sins imputed to his country and to himself as its Prime Minister.'[2191]

At the inauguration of the United Nations, Smuts was a revered figure in the Commonwealth and venerable world statesman, widely respected for his visionary commitment to international peace and justice.[2192] A junior member of the American delegation, Tapley Bennett, in an interview in 1990 as part of the UN-Yale Oral History project, said of the San Francisco Conference: 'One of the great figures there was Smuts of South Africa. He was legendary of course.'[2193] Smuts was described as a 'distinguished figure,' who came to the Conference 'with a rich background of experience, including his well-known work with President Wilson in connection with the mandates system of the League of Nations.'[2194]

Mackenzie King, the Prime Minister of Canada, suggested in the Steering Committee that, since Smuts had a 'standing in the diplomatic world unrivalled by any,' and since many people were anxious to hear him, he be granted the special privilege of speaking early during the Plenary Session. Anthony Eden, the Foreign Secretary of Great Britain, in support, referred to Smuts as 'the doyen of the Conference - quite unrivalled in intellectual attributes and unsurpassed in experience and authority.'[2195]

Of the setting of the Conference, Smuts said: 'California is a jewel of a country and San Francisco is a jewel within a jewel.'[2196] Smuts and Jannie (his son) were 'keep[ing]

[2191] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 433.

[2192] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 60. Schwarz describes Smuts as a 'commanding personality' at the San Francisco Conference. B Schwarz *Memories of empire volume 1: The white man's world* (2011) 286.

[2193] Yale-UN Oral History Interview with Tapley Bennett (24 July 1990) 9.

[2194] JE Harley *Documentary textbook of the United Nations* (1947) 441.

[2195] King and Eden as quoted in JC Smuts *Jan Christian Smuts: A biography* (1952) 383.

[2196] Smuts to JD Smuts 24 April 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 530. Jannie Smuts also noted that it was springtime in California, and San Francisco, 'jewelled city of many hills, was looking its best, nestling in green rolling country one one of the world's finest inland harbours.' JC Smuts *Jan Christian Smuts: A biography* (1952) 392. On 8 May 1945, Smuts wrote: 'I daresay to many [delegates] it is a real holiday at their country' expense and in a pleasant beautiful place. It is a beautiful place in a most noble setting. Macchia hills all round, and some of them fairly high. I was on Sunday afternoon on the highest - 2 600 ft high Tamalpais, at the very moment (unbeknown to me) when the unconditional surrender was being sighed at Rheims.' Smuts to MC Gillett 8 May 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 535. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 392.

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well, very well. . .,' Smuts told a friend on 5 June 1945.[2197] He continued: 'I still enjoy my weekly walk, two or three hours up and down these hills and valleys.'[2198] 'If I had not these walks,' Smuts added, 'I would - like the Apostle Paul - be of all men the most miserable.'[2199]

With regard to the task at hand, on the eve of the Conference Smuts felt less than optimistic over the outcome. To his eldest son, Japie, Smuts expressed his apprehension that the 'loss of Roosevelt [was] a sort of death-blow . . . for this conference.'[2200] 'Roosevelt's heart was in the success of the conference the importance of which he saw clearly,' Smuts stated.[2201] He continued:[2202]

> Now the conference is nobody's baby and I fear we shall have a very difficult and even dangerous little run here. I shall, of course, do what I can, but the voice of South Africa will be a mere cheeping

[2197] Smuts to MC Gillett 5 June 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 543.

[2198] *Ibid*. It was Smuts' habit, throughout his life, to walk as often as his schedule would allow. Jannie Smuts recorded that in San Francisco, his favourite route was 'out beyond the Golden Gate, above Muir Woods, and up the slopes of Tamalpais . . .' JC Smuts *Jan Christian Smuts: A biography* (1952) 392.

[2199] *Ibid*.

[2200] Smuts to JD Smuts 24 April 1945 in *Ibid* 529. Roosevelt, who had been the source of much of the energy behind the creation of the United Nations, never made it to San Francisco. He passed away on 12 April, just days before the Conference opened on 25 April 1945. J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 21.

[2201] Smuts to JD Smuts 24 April 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 529 - 530.

[2202] *Ibid* 530.

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among the big birds . . . Our work begins tomorrow and I feel far from easy about the way things are going.[2203]

However, with a note of his characteristic optimism, on 4 June 1945, exactly 45 years to the day that he had left Pretoria and his wife to join the commandos in the Anglo Boer War, Smuts wrote to his wife from San Francisco:[2204]

> Always when I see or write this date I think back to the sad parting in Pretoria in 1900 - a separation that lasted two year in which so much happened that affected the fate of our country and people. Yet in those two years of pain and loss[2205] the foundation was laid of all the great work and progress which followed in the next generation. It is an encouragement never to become weary or depressed when difficulties are almost overwhelming. The path of duty and conscience remains the right road to the future, however dark it may look.

[2203] Also, at the outset, Smuts perceived the Conference to make little progress. To his dismay, Smuts found that other delegates lacked utterly his own burning sense of urgency. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 232. By the third week of the conference, Smuts stated that, '[t]he work here is very slow, and the talking very copious.' The delegates had 'actually done very little to the job at hand.' To him it was 'all a great trial,' but he tried 'to be patient.' Smuts to MC Gillett 8 May 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 535. On 21 May, Smuts reported: 'All goes well with us here and we have nothing to complain of except that the conference is lasting too long.' Smuts to SM Smuts 21 May 1945 (translation) in *Ibid* 538. 'Our work here is much delayed,' Smuts wrote, 'and progress from day to day is still small. But surely an end must come, or be made, and our Big Bosses have now set 15 June as the end date of our labours. So another ten days of struggle and sweat.' Smuts to SM Smuts 4 June 1945 (translation) in *Ibid* 540. However, when a crisis erupted over Russian intransigence with regard to the voting formula in the Security Council, Smuts stated that, '[h]ere progress is slow and the going is hard all the way.' Smuts to MC Gillett 5 June 1945 in *Ibid* 542. As the Conference floundered and Smuts grew more impatient, Jannie Smuts records his father as saying that it was: '[D]rifting badly out of control, and the difference between this and the last Peace Conference at Paris is the absence of such dominating personalities as Wilson, Clemenceau and Lloyd George. We shall miss them badly.' As quoted in JC Smuts *Jan Christian Smuts: A biography* (1952) 386. On 7 June, Smuts addressed Edward Stettinius, in his capacity as Chairman of the Conference, with 'an appeal . . . for speeding up our work.' Smuts to ER Stettinius 7 June 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 543 - 544. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 383. Smuts included a draft statement in his letter that he proposed be made in order to achieve a more speedy closure to the Conference. *Ibid* 544.

[2204] Smuts to SM Smuts 4 June 1945 (translation) in *Ibid* 540. See also T Cameron *Jan Smuts: An illustrated biography* (1994) 159.

[2205] It was during the time of their separation that their first born, a son named Koosie, died. See WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 129 - 130.

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Commentators differ in their assessment of the significance of Smuts' contribution at the founding conference of the United Nations. Jonathan Hyslop, for example, states that Smuts played a 'central role.'[2206] By the end of April, Eden reported to Churchill:[2207]

> We are a pretty good Empire party here. Smuts has been most helpful at every point. We [the delegates] are giving him the Chairmanship of the most important commission [on the General Assembly].

On the other hand, Keith Hancock writes:[2208]

> His role . . . was dignified rather than useful. As president of the Commission on the General Assembly and as a respected elder statesman he was able once or twice to help the Conference over what he called . . . its 'styles and hurdles;' but neither he nor any other individual would have been able to make any big dent in a document that had been so long and so carefully prepared.[2209]

'The work here is heavy with me, as usual,' Smuts wrote to his wife on 5 May 1945: 'I am president of the most difficult, most intractable commission - that on the general assembly,

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[2206] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 457. Heyns shows that Smuts worked incessantly, often behind the scenes, on issues such as the veto power of the major powers and the structure of the Economic and Social Council. Smuts exercised his considerable influence to secure the continued existence of regional security pacts. Smuts also emphasised the need for the new organisation to place more emphasis than did the Dumbarton Oaks Proposals on the promotion of international cooperation in economic and social matters. CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 336.

[2207] As quoted in D Dilks *Churchill and company: Allies and rivals in war and peace* (2012) 113.

[2208] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432.

[2209] At San Francisco, notes Cockram, Smuts left the impression of being a relic of the past. Almost alone of the delegates, he wore military uniform, and his age was apparent among the younger generation who had emerged into prominence during the Second World War. Cockram can only recall one other delegate wear a uniform - General Carlos Romulo of the Philippines. B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 7. The judgment about Smuts wearing military uniform seems misplaced. At the time the San Francisco Conference commenced, the war in Europe and and the war in the Pacific were ongoing. Smuts was not only the Prime Minister of South Africa, but he was also Commander-in-Chief of the South African forces fighting in both these theatres of war.

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and for the next two or three weeks the going will be hard.'[2210] However, David Tothill claims that the honour bestowed on Smuts of the Chairmanship of Commission II on the General Assembly 'was a hollow one because it was largely a ceremonial job. The action lay elsewhere in the committees and sub-committees.'[2211]

In order to assess Smuts' contribution, it should be borne in mind that, in effect, he attended the San Francisco Conference 'in two capacities, the one in his own right as a great world statesman and the other as a delegate [of the] small South African Union.'[2212]

Hancock's assessment seems correct in the context of Smuts' role as leader of the South African delegation. The South African delegation maintained 'a relatively low profile' at San Francisco.[2213] An American delegate, Virginia Gildersleeve, recounts how the South African representative in Committee II/3 told her that 'his instructions were never to speak and always vote with the great powers.'[2214]

The reason for this can be traced to the fact that Smuts assumed a very specific attitude towards the San Francisco Conference. The primary aim, Smuts explained at the Commonwealth meeting in London on the eve of the San Francisco Conference, was to

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[2210] Smuts to SM Smuts 5 May 1945 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 532. Commission II, over which Smuts presided, dealt with General Assembly issues. It allocated questions of structure and procedures, political and security functions, economic and social cooperation, and trusteeship arrangements to four technical committees. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 7. However, it seems that Smuts may have overestimated his responsibilities. Three days later he said to a friend: 'I am president of the commission on the general assembly but do not feel overworked and can lend a helping hand in difficulties that turn up in other commissions.' Smuts to MC Gillett 8 May 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 535. And, on 21 May, he wrote to his wife: 'I am not working myself to death and my health is still very good.' Smuts to SM Smuts 21 May 1945 (translation) in *Ibid* 538. Of Smuts chairmanship of Commission II, his son noted in his diary at the time: 'Delegates have been pleasantly surprised at the brisk and efficient way the Oubaas handles his meetings. He has a mild and benevolent manner which is very deceptive, for under this cloak he hides the firm resolve of a dictator. But he does it so well that people do not realize that they are being dictated to, and submit quite readily to his persuasions. So it was this morning. By deftly steering the meeting, pitfalls were avoided and the meeting broke up in high good humour.' JC Smuts *Jan Christian Smuts: A biography* (1952) 386. JC Smuts incorrectly states that Commission II was also tasked with the Preamble. The Preamble was, in fact, dealt with by Commission I.

[2211] D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 182.

[2212] Hyman Basner, a member of the South African Senate, *Sen Deb* 1945 Col 615 as quoted in *Ibid* 183.

[2213] *Ibid* 185.

[2214] VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 340. Shearer also makes the point that the small size of the South African delegation prevented it from participating fully in the work of all the UNICO committees and forced it to concentrate in terms of its brief on the issues of special concern to the prime minister. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 323.

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create an organisation to provide the machinery for a working arrangement between the Big Three.[2215] All other considerations were subordinate.[2216]

As far as Smuts was concerned, the Dumbarton Oaks Proposals were 'a careful draft prepared by experienced officials.' These proposals were the 'work of a commission of skilled experts who had sat for a long time and had conducted searching discussions.' Thus, amendments thereto should be confined 'to essentials or the process of discussion would be endless.'[2217] In early June, Smuts stated to a friend:[2218]

> The world is so dangerous, people are so weary, and we have so much to do in preventing utter wreck and ruin from overtaking poor Europe that one simply has not the heart to quarrel.

Smuts reconciled himself with the fact that the preservation of Great Power unity would require major concessions from the medium and smaller powers.[2219]

In his capacity as a world statesman, on the other hand, Smuts was revered for his role in the establishment of the League of Nations, honoured for his contribution to the inevitable Allied victory, and respected and listened to whenever he intervened in

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[2215] *Ibid* 4.

[2216] *Ibid*. In this regard, Heyns comments that Smuts' influence at San Francisco was not what it could have been, partly because he was 'deeply concerned, almost obsessed, with the idea of security, and his great fear was that the Conference might prove abortive. Convinced that peace could be maintained only by the concentration of great authority in the Great Powers, he did little more than support the position of the Big Five.' CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 336.

[2217] *Minutes of Meetings and Memoranda, British Commonwealth Meeting* (April 1945) BCM (45) 1st-12th meetings; 5th meeting (6 April 1945) 11. In Tothill's opinion, Smuts viewed the Dumbarton Oaks proposals through British eyes, as it were, and saw his own role and that of his delegation basically as extensions of the British delegation. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 180.

[2218] Smuts to MC Gillett 5 June 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 542.

[2219] JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 4. Prior to San Francisco, Smuts had said of the small countries: 'Small dogs often bark the loudest, but they cannot do much harm.' However, this statement proved ironic, as it was precisely the small powers acting *en masse*, not the Great Powers, who turned out to be South Africa's most determined and successful opponents in the United Nations. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 188.

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debate.[2220] Specifically with regard to his contribution to the Preamble of the Charter, Peter Marshall justifiably takes issue with Hancock's conclusion that Smuts' role at the Conference was 'dignified, rather than useful.'[2221] Marshall states that Smuts did not spend all his time 'fighting at the coal-face' for 'his' draft of the Preamble. However, he did not need to. As one of the most prestigious figures at the Conference, Smuts 'had effectively prevailed from the start.'[2222]

[2220] B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 7. As one of the elder statesmen of the Conference, Smuts was a keynote speaker at the unveiling of a memorial to Roosevelt in at the Muir Woods National Monument on 12 May 1945. See 'Address by Field Marshal JC Smuts, prime minister of the Union of South Africa and chairman of the South African delegation at the unveiling in the Muir Woods National Monument on Saturday Afternoon, May 12, of a plaque in memory of the late President Roosevelt' (12 May 1945) No 64 in *United Nations Archive* S0596/Box 7/File 13. The press release containing a copy of the address bears the following heading: 'Confidential release for publication at time of delivery, which is expected to be about 5 PM, PWT, Saturday, May 12, 1945. Not to be previously published, quoted from or used in any way.' Muir Woods was 'a four-hundred-acre park of giant sequoia redwoods . . .' Here, in a deep valley, was 'the most superb glad of huge trees' that Jannie Smuts had ever seen. 'This sequoia is the tall coastal type . . . which attains a height of over three hundred feet and an age in excess of a thousand years.' JC Smuts *Jan Christian Smuts: A biography* (1952) 391. On 21 May 1945, Smuts wrote to his wife: 'On Saturday afternoon a plaque for Roosevelt was unveiled here in Muir woods by Stettinius and I was the chief speaker. Many people congratulated me afterwards and said it was the finest address that had ever heard.' Smuts to SM Smuts 21 May 1945 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 538. Smuts seemingly enjoyed a good relationship with the American Secretary of State. He told Margaret Gillett: 'We are really very friendly, and I daresay he appreciates that I am helpful with the stiles and the hurdles in the way of the conference.' Smuts to MC Gillett 5 June 1945 in *Ibid* 543. 'Stettinius, who is very friendly to me,' Smuts wrote, 'gave me a wonderful salad bowl hewn out of the giant Sequoia, a real gem of a gift.' *Ibid*.

[2221] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 433 as quoted in P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 64 n22. Marshall finds Hancock's to be an 'odd judgment.' *Ibid*.

[2222] *Ibid*.

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CHAPTER 8

THE PREAMBLE TO THE CHARTER OF THE UNITED NATIONS

1. Introduction

The Dumbarton Oaks Proposals did not contain any reference to human rights, either in the principles of the organisation as a whole, or in the functions of the Security Council or the General Assembly.[2223] The Great Powers belatedly would permit only a 'single vague reference'[2224] to human rights and fundamental freedoms within the confines of general social and economic cooperation.[2225] The Dumbarton Oaks Proposals also did not contain any preamble.[2226]

By the time the Chinese commenced their participation in the second phase of the Dumbarton Oaks discussions, the leader of the delegation and the Chinese Ambassador in Washington, Wellington Koo, voiced complaint at the very first opportunity that 'nothing was said about justice' in the draft text of the Charter.[2227] Koo continued:[2228]

> It would be highly desirable to do everything possible to remove any suspicion on the part of the peace-loving peoples of the world that this new organization . . . might eventually denigrate into an organization of power politics. If we could do something to give a moral tone to the character of the new organization, we would go a long way toward fostering confidence and removing misgivings, possibly based upon cynicism, doubts, or suspicions.

These words of warning of the Chinese fell largely on deaf ears at the Dumbarton Oaks Conference. The proposals that emerged from the negotiations between the Great

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[2223] PG Lauren *The evolution of international human rights: Visions seen* (2003) 165.

[2224] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 107.

[2225] PG Lauren *The evolution of international human rights: Visions seen* (2003) 165. The promotion of 'respect for human rights and fundamental freedoms' appeared in Chapter IX of the Proposals, which dealt with the establishment of the Economic and Social Council. See See Chapter IX (A) (1), Dumbarton Oaks Conversations on World Organisation, 21st August - 7th October 1944, Statement of Tentative Proposals (1944) as referred to in CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 334. 'All the stirring and forceful Anglo-American about a war fought to enthrone the rights of man, all the declarations aimed at rallying other nations and peoples to fight for freedom,' conclude Normand and Zaidi, 'found expressions at the very last moment in eight words relegated to the back of the bus: "promote respect for human rights and fundamental freedoms."' R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 114 - 115.

[2226] LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 53.

[2227] PG Lauren *The evolution of international human rights: Visions seen* (2003) 163.

[2228] As quoted in *Ibid* 164.

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Powers, in the words of one observer, lacked any 'humanity' whatsoever, and emphasised only 'the actual facts' of *realpolitik*.[2229] American political scientist, Karl Loewenstein, said in 1945:[2230]

> [P]erhaps due to the over-legalistic phraseology of a document devoid of any literary appeal, and to its lack of idealism and ideological courage . . . emotionally the [Dumbarton Oaks] proposals have been a dud.[2231]

As Senator Arthur Vandenberg, United States delegate to the San Francisco Conference, remarked: 'In a word, our League needs a "soul."'[2232]

[2229] Ruth Russell as quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 164.

[2230] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 173.

[2231] Sydney Fay, a professor of history at Harvard University, wrote during the Dumbarton Oaks negotiations that it 'was a Conference not so much of Idealists (though idealism was not lacking) as of technicians . . . Their preoccupation was less with principles and more with a practicable and quick-working machinery.' As quoted in *Ibid* 144.

[2232] As quoted in *Ibid*. 'The Dumbarton Oaks proposals held out no hope of a millennium,' wrote one commentator. 'This was not the kind document that could stir after-dinner orators to eloquent speeches about eternal peace.' Vera Micheles Dean as quoted in S Moyn *The last utopia: Human rights in history* (2010) 58. Dean was a promotor of the Dumbarton Oaks proposals. Their dry, legalistic nature was preferable in her opinion to the League's 'inflexible and moralistic model.' *Ibid* 57 - 58. The Dumbarton Oaks proposals left the rest of the world underwhelmed, notes Mazower. They were all too obviously a Big Power stitch-up, couched in dry, bureaucratic language that failed to capture the imagination. This is where Smuts let in. Smuts understood the need for the League of Nations to win widespread popular acclaim to have any chance of prospering. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 60.

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It is generally accepted that the Preamble was 'primarily the inspiration of one man' - Smuts.[2233] In hindsight, his contribution to the Preamble of the Charter of the United Nations was perhaps his finest hour and his most lasting contribution.[2234] It is probably the prime example of the idealistic Smuts, to a large extent untainted by pragmatic political considerations.[2235]

Smuts understood the need for the Charter to win widespread popular acclaim to have any chance of prospering.[2236] At San Francisco, Smuts referred to a preamble as a 'statement of ideals and aspirations which would rally world opinion in support of the

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[2233] P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 56. Charles Kingsley Webster and Clement Attlee were among those with direct experience of events, who credited Smuts with defining the essence and spirit of the Preamble. S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55. Many scholars of the United Nations simply state that the Preamble of the Charter was based on a draft prepared by Smuts after the British Commonwealth meeting held in London in April 1945. N Bentwich & A Martin *A commentary on the Charter of the United Nations* (1951) 2; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 263. Reinalda writes that the Preamble was 'inserted at the instigation of Smuts.' B Reinalda *Routledge history of international organizations: From 1815 to the present day* (2009) 290. Spijkers states that Smuts 'basically drafted this Preamble all by himself.' O Spijkers 'Global values in the United Nations Charter' (2012) 59 *Netherlands International Law Review* 381. Schwarz notes that Smuts was a 'commanding personality' at the inauguration of the United Nations, drafting the Preamble to the United Nations' founding document. B Schwarz *Memories of empire volume 1: The white man's world* (2011) 286. Millin states that Smuts wrote the Preamble to the Charter of the United Nations at 74. SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 135. Bentwich also comments that the preamble was 'the work of Field-Marshal Smuts . . .' It expressed the moral ideals of the Charter. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 48. However, as set forth below, Charles Kingsley Webster of the United Kingdom delegation also had a hand in it at the stage of the British Commonwealth meetings, as did Virginia Gildersleeve and others of the United States delegation at San Francisco. Gildersleeve was the author of the resounding opening, 'We the Peoples of the United Nations,' inspired, of course, by the opening phrase of the Constitution of the United States. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 187; B Reinalda *Routledge history of international organizations: From 1815 to the present day* (2009) 286; LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 55.

[2234] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 346.

[2235] In the case of any practicing politician, pragmatic political considerations can probably never entirely be divorced from idealism. Thus, although Smuts was likely also pursuing what he believed to be South Africa's interests, he did have, however, a genuine commitment to the idealism about the United Nations. J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 457. Although his enemies, both at home and in the international arena, used his own words and his vision as a stick to beat him in his declining years, the Preamble expressed in noble language all that is best in his character and his service in the cause of humanity. P Beukes *The holistic Smuts: A study in personality* (1989) 181. Even Tothill, who is generally very critical of Smuts, acknowledges that, in the final analysis, men like Evatt of Australia wanted a success for themselves and their countries; Smuts wanted the United Nations to succeed. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 189.

[2236] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 60.

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Charter.'[2237] Virginia Gildersleeve, the only female member of the United States delegation, proposed that the preamble might be 'so simple and clear and moving that it might hang upon the wall of every home' in all the member states, 'and be understood by common man everywhere, and warm their hearts and strengthen them after the long exhaustion and sorrow of war.'[2238]

2. The Meeting of Commonwealth Prime Ministers in London (4 - 13 April 1945)

On the eve of the San Francisco Conference, Commonwealth Prime Ministers met at 10 Downing Street under the chairmanship of Viscount Cranborne, the Dominion Secretary, for consultation about post-war problems in general, and in particular to examine the text that emerged from Dumbarton Oaks and the proposals agreed-upon at Yalta.[2239] It was at this Commonwealth meeting that Smuts launched his concept of a preamble to the Charter.[2240] As Keith Hancock explains, Smuts' intent was to leaven the legalistic tone of the Dumbarton Oaks Proposals by finding uplifting 'words to touch the heart of the common man.'[2241]

[2237] 'Summary report of second meeting of Committee I/1' (8 May 1945) Doc 133 I/1/7 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 277.

[2238] 'Verbatim minutes of first meeting of Commission I' (25 June 1945) Doc 1006 I/6 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 19.

[2239] P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 57.

[2240] Cameron writes: '[A]n important voice such as Smuts' could not go unheard. It rang out loudly one again in the words of the Preamble to the Charter of the United Nations.' T Cameron *Jan Smuts: An illustrated biography* (1994) 157. It is not clear how long the idea of a preamble had been engaging Smuts' attention. According to Egeland, Smuts went to London with a draft preamble. L Egeland *Bridges of understanding: A personal record in teaching, law, politics and diplomacy* (1977) 167 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 185. In the debate on his vote at the 1945 parliamentary session, Smuts had referred to the need for the Charter to reflect the question of 'fundamental human rights.' HA Deb vol 52 (22 March 1945) Cols 3983 - 3984 as quoted in *Ibid* 185.

[2241] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 431 - 432 as quoted in S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55. See also M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 61. Reading the Dumbarton Oaks proposals, Smuts commented that they contained nothing to stir the pulse, or to meet the hopes of mankind. B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 6.

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Smuts praised the preparatory work that had been done, but downplayed the role of legalism in international affairs. He expressed the conviction that something was missing from the Dumbarton Oaks text. It was, he stated:[2242]

> [A] legalistic document which did not fit the bill. Humanity has been engaged in upon one of the greatest struggles of all history. Fundamental human rights had been at stake. Like all great wars, this war had been at bottom a religious one.

This sentiment, however, was lacking in the Dumbarton Oaks text. What the world expected was a statement of the Allied peoples' human faith; of the things they had fought for and which they should try to stabilise and preserve in the world.[2243] According to the minutes of this meeting:[2244]

> [Smuts] suggested that we should write into the Charter an entirely new first Chapter, which would state our human faith in the ideas for which we had fought and which we considered basic. Something like that would appeal to the world. Something was required which would touch the heart of the common man, and would make him feel that he had fought to set up not simply a piece of political machinery, but something very great.

Smuts laid on the table the draft of 'an eloquent declaration of humanity's hopes and faith'[2245]:[2246]

> Preamble
>
> We the United Nations, assembled in Conference to seek a new way of life for the nations, and to prevent a recurrence of the fratricidal strife which has now twice in our generation brought untold sorrows and losses on mankind, and to establish an international organisation to that end:

[2242] *Minutes of Meetings and Memoranda, British Commonwealth Meeting (April 1945) BCM (45) 1st-12th meetings* [hereinafter '*BCM Minutes*']; *BCM Minutes* 5th meeting (6 April 1945) 11. See also *BCM Minutes* 10th meeting (11 April 1945) 11; CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 334.

[2243] *BCM Minutes* 5th meeting (6 April 1945) 11.

[2244] *Ibid.* Wolfram notes that, unlike the Covenant of the League of Nations, the Dumbarton Oaks Proposals did not envisage a preamble for the Charter of the United Nations. The first two chapters of the Proposals, dealing with 'Purposes' and 'Principles' contained provisions regarding motives and principles commonly found in a preamble. Smuts nevertheless insisted on drafting a preamble. The resulting co-existence of this preamble and provisions concerning principles and purposes is somewhat inharmonious, since the former represents an occasionally inaccurate duplication of the Purposes and the enumeration of the governing Principles found in Articles 1 and 2. R Wolfram 'Preamble' in B Simma (ed) *The Charter of the United Nations: A commentary* (1994) 45. However, this legal interpretative assessment completely misses the point of Smuts' stated aims to be achieved with the Preamble.

[2245] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432.

[2246] *BCM Minutes* 5th Meeting (6 April 1945) 11.

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Do hereby declare in this Charter of the United Nations, our common faith and objects, and the principles on which we seek to found an organisation for the peace progress and welfare of mankind,

Chapter 1 - The Common Faith

1. We declare our faith in basic human rights, in the sacredness, essential worth, and integrity of the human personality, and affirm our resolve to establish and maintain social and legal sanctions for safeguarding the same:

2. We believe in the practice of tolerance in the equal rights of individuals and of individual nations large and small, as well as in their inherent right to govern themselves without outside interference, in accordance with their own customs and way of life:

3. We believe in the enlargement of freedom and promotion of social progress, and in raising the standards of life, so that there may be freedom of thought and of expression and religion, as well as freedom from want and fear for all:

4. We believe in nations living in peace and peaceful intercourse with each other as good neighbours, and in renouncing war as an instrument of national policy.

The Dominion leaders generally greeted Smuts' suggestions with enthusiasm.[2247] According to Hancock:[2248]

The conference of Prime Ministers agreed that it would make a noble Preamble to the Charter.[2249] But perhaps too noble? Perhaps 'not quite consistent in style and contents with the rest of the Charter'? That was the feeling of British ministers and their expert advisers.

[2247] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55; P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 58.

[2248] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432. See also CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 335.

[2249] Lord Cranborne, the Dominions Secretary, explained that Dumbarton Oaks had been a gathering of officials, whose object had been to set up a skeleton machinery. That they did not produce a preamble did not mean that they had not considered one necessary. P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 58.

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They recalled 'some more modest' forgotten proposal for a preamble gathering dust in the files of the Foreign Office, and suggested that it be conflated with Smuts' proposal.[2250] This was accomplished by the author of the Foreign Office draft, Charles Kingsley Webster.[2251] Webster's original proposal read:[2252]

> THE HIGH CONTRACTING PARTIES
>
> In oder to achieve international co-operation for the maintenance of international peace and security
>
> By the acceptance of principles and the institution of methods to ensure that armed force is only used [used only] in the interests of the community of nations, [and not for national ends,]
>
> By the provision of means by which all disputes that threaten the maintenance of international peace and security shall [can] be settled,
>
> By the establishment of conditions under which justice and respect for the obligations of international law [and treaties] can be maintained,

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[2250] Cranborne proposed that the Foreign Office draft be circulated so that the two versions might be compared and a further text produced upon which all delegates could agree. *BCM Minutes 5th meeting* (6 April 1945) as quoted in P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 58. See also CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 335; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 61. The background of Cranborne's suggestion was, as noted by Marshall, 'something of a diplomatic curiosity.' The Foreign Office draft of the preamble that had been prepared by Charles Kinsley Webster in the wake of Dumbarton Oaks, had aroused little enthusiasm in the Foreign Office, and had in fact been lost in circulation. When Smuts made his proposal at the Commonwealth meeting, collective Foreign Office memory was stirred. P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 58.

[2251] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432; CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 335. Webster's diary for Monday 8 April to Sunday 15 April reads in part as follows: ' My principal excursion into the limelight was on the question of a Preamble. Smuts had drawn up rather a terrible document. Cranbourne said very rashly that the F.O. [Foreign Office] had prepared one. This was one I had drawn up three months ago & failed to get anyone much interested in it. This was given to Smuts & it was suggested he should revise his draft after seeing it. Accordingly I went over to him [on April 11] & he recognised me & talked of Paris 1919 days. He asked me to prepare a revise & see him in the morning . . . So after 10 pm I made a plan and amalgamated his document much shortened and mine. I pulled Nora out of bed at 12 o'clock to type it which she did very nicely. When I saw Field Marshall Smuts he had also prepared a draft somewhat in the same way, but his, typed by secretaries, was not ready. Accordingly, he looked at mine and with one to two minor changes accepted it. I hastened in his car to take it to Laithwaite who got it roneod and it was on the table by 10.35 [12 April]. The Field Marshall gave me all the credit . . . The Conference was fairly well disposed to the paper . . .' As quoted in PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 57.

[2252] As reprinted in *Ibid* Appendix E 166 - 167. For the Foreign Office text, see also B Reinalda *Routledge history of international organizations: From 1815 to the present day* (2009) 286. It appears from Webster's diary entry of 21 December 1944 that he prepared his draft preamble around that time. See PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 54. The square brackets reflect comments by PS Falla in a Minute of 2 January 1945.

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By the employment of international machinery for the [promotion of the] economic and social advancement of all peoples, and ensuring respect for human rights and fundamental freedoms

Agree to this Charter of the United Nations

Set forth below is Webster's conflation of the two drafts,[2253] with Smuts' provisions in bold underline:

PREAMBLE TO THE CHARTER OF THE UNITED NATIONS

THE HIGH CONTRACTING PARTIES:

DETERMINED

To prevent a recurrence of the fratricidal strife which has now twice in our generation brought untold sorrows and losses on mankind

and

to re-establish the **faith** of men and women **in basic human rights, in the sacredness, essential worth, and integrity of the human personality**, **in the equal rights of individuals and of individual nations large and small** [and][2254] **in the enlargement of freedom and [the promotion of][2255]** to promote **social progress, and in raising the standards of life** everywhere in the world.

and for these ends

To practice tolerance and to live together **in peace and peaceful intercourse with each other as good neighbours**,

In order to make possible co-operation between nations for the maintenance of international peace and security necessary of these purposes,

By the acceptance of principles and the institution of methods to ensure that armed force is only used in the interests of the community of nations, and not for national ends,

By the provision of means by which all disputes that threaten the maintenance of international peace and security shall be settled,

By the establishment of conditions under which justice and respect for the obligations of international law and treaties, *[and fundamental human rights and freedoms]*[2256] can be maintained,

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[2253] As reprinted in *Ibid* Appendix E 166 - 167. Webster's own handwritten note reads: 'My conflation of Smuts draft and my draft of Preamble made by me on the night of Wed. 11 April 1945, typed by Nora in the early morning of Thur. 12 April 1945, agreed to by Genl Smuts at the Hyde Park Hotel between 9 and 9.30 that morning, duplicated by the secretariat and laid on the table for the British Commonwealth Conference 12 April 1945.' *Ibid* 167.

[2254] Deleted in the final version.

[2255] Replacing 'to promote' in the final version.

[2256] In Webster's original version, this phrase was part of the succeeding sentence.

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> By the employment of international machinery for the promotion of the economic and social advancement of all peoples,
>
> Agree to this Charter of the United Nations

Webster's diary entry for Monday 8 April to Sunday 15 April reads in part as follows:[2257]

> My principal excursion into the limelight was on the question of a Preamble. Smuts had drawn up rather a terrible document. Cranbourne said very rashly that the F.O. [Foreign Office] had prepared one. This was one I had drawn up three months ago & failed to get anyone much interested in it . . . I made a plan and amalgamated his document much shortened and mine . . . The Field Marshall gave me all the credit . . . The Conference was fairly well disposed to the paper . . .

Webster makes the suggestion that all his ideas were included, and many of Smuts' omitted.[2258] However, it would seem from the textual comparison between the respective drafts of Smuts and Webster, that Webster retained most of the substance of Smuts' so-called 'terrible document,' and simply followed Smuts' draft with his own. It is, however, worth considering those minor portions of the Smuts draft that Webster omitted from his conflation:

(i) from Smuts' paragraph 2, the following phrase: 'in the equal rights of individuals and of individual nations large and small, as well as in their inherent right to govern themselves without outside interference, in accordance with their own customs and way of life;' and

(ii) from Smuts' paragraph 3, the following phrase: 'so that there may be freedom of thought and of expression and religion, as well as freedom from want and fear for all;' and

(iii) from Smuts' paragraph 4, the following phrase: 'and in renouncing war as an instrument of national policy.'

Thus, in sum, Webster omitted Smuts' statement in support of self-determination, Smuts' restatement of Roosevelt's Four Freedoms, and Smuts' unqualified statement of the renunciation of war as an instrument of nations policy.

Although nowhere explicitly stated, the reasons for these omissions are not difficult to deduce. Webster was obviously concerned about the possibility of sharp reaction and

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[2257] As quoted in PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 57.

[2258] JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 4 n11.

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dissension in the Foreign Office to language in the preamble in support of self-determination, especially given the sensitivity with regard to India's status within the Britain's Empire at that time, and made all the more acute by pressure from the Roosevelt Administration for de-colonisation.

Re-stating Roosevelt's Four Freedoms might have given too prominent a place, and suggested British subservience, to such a famous American declaration of war aims. Lastly, Webster, ever the astute diplomat, would never allow a statement in favour of the unqualified renunciation of war as part of national strategy - better to replace that with the more qualified, 'ensure that armed force is used in the interests of the community of nations, and not for national ends.' At least, with such a qualification, the possibility would be retained for armed force cloaked in the promotion of the 'interests of the community of nations.'

Smuts introduced the revised draft to the British Commonwealth meeting.[2259] It was this version that went forward to San Francisco under Smuts' name.[2260] However, Peter Fraser, the Prime Minister of New Zealand, commented that the revised draft lacked some of the spontaneity and warmth of Smuts' earlier draft, and that he considered that the United States would certainly seek to incorporate some reference to the Four Freedoms. DV Evatt, the Australian Minister for External Affairs, agreed that whatever preamble was finally adopted, the warmth and idealism of Smuts' earlier draft should be preserved.[2261]

[2259] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 335 - 336.

[2260] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 61.

[2261] *BCM Minutes* 11th Meeting (12 April 1945) as referenced in P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 59. Marshall reports that the meeting concluded that the draft formed an admirable basis for a preamble; that the opening clause might be expanded to include a statement of the positive aims which it was hoped to be achieved by setting up the new organisation; and that their respective delegations would support at San Francisco the adoption of a preamble based upon the draft they had before them. P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 59.

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3. The San Francisco Conference

Smuts set the idea of a preamble in motion as soon as he arrived at San Francisco.[2262] In his address to the 6th Plenary Session of the Conference on 1 May 1945, Smuts, made an impassioned plea for the protection of human rights:[2263]

> The new Charter should not be a mere legalistic document for the prevention of war. I would suggest that the Charter should contain at its very outset and in its preamble, a declaration of human rights and of the common faith which has sustained the allied peoples in their bitter and prolonged struggle for the vindication of those rights and that faith . . .
>
> We have fought for justice and decency and for the *fundamental freedoms and rights of man*, which are basic to all human advancement and progress and peace. Let us, in this new Charter of humanity, give expression to this faith in us, and thus proclaim to the world and to posterity, that this was not a mere brute struggle of force between the nations but for us, behind the mortal struggle, was the moral struggle, the vision of the ideal, the faith in justice and the resolve to vindicate the *fundamental rights of man*, and on that basis to found a better, freer world for the future . . .
>
> Let us put it into the Charter of the United Nations as out confession of faith and our testimony to the future.

On 26 April 1945, the South African delegation advised the Conference that the leader of its delegation, Field Marshal Smuts, would make a far-reaching proposals for a preamble to the Charter.[2264] Smuts did so on 2 May, proposing the text approved at the

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[2262] B Reinalda *Routledge history of international organizations: From 1815 to the present day* (2009) 286. Marshall states: 'Although, as befitted a veteran of the Versailles Conference and a leading world authority on the League of nations, he [Smuts] was much concerned with other major questions concerning the draft United Nations Charter, Smuts launched the notion of a preamble as soon as he arrived in San Francisco.' P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 59.

[2263] On 1 May 1945, the Conference confidentially released for publication at the time of delivery (which was expected to be Tuesday afternoon, 1 May 1945) the address that Smuts would make at the sixth plenary session of the Conference. 'Address by Field Marshal Jan Christian Smuts, prime minister of the Union of South Africa and chairman of the South African delegation at the sixth plenary session of the Conference' (1 May 1945) No 34 in *United Nations Archive* S0596/Box 7/File 13.

[2264] To Sir A Ramaswami Mudaliar of India - which at that time had yet to achieve sovereign independence - belongs the distinction of having made the first notable reference to human rights at the San Francisco Conference: 'There is one great reality, one fundamental factor, one eternal verity which all religions teach . . . the dignity of the common man, the fundamental human rights of all beings all over the world.' As quoted in JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 161' unpublished LLD thesis, University of South Africa, 2007 12.

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Commonwealth discussion earlier in April.[2265] It is noteworthy that South Africa's proposal for a preamble preceded all the other formal amendments relating to human rights.[2266]

The following day, 3 May, the South African delegation circulated a slightly revised version.[2267] It read:[2268]

> 'PREAMBLE TO THE CHARTER OF THE UNITED NATIONS SUBMITTED BY THE SOUTH AFRICAN DELEGATION IN REVISION OF DRAFT OF APRIL 26, 1945
>
> The High Contracting Parties:
>
> Determined
>
> to prevent a recurrence of the fratricidal strife which has now twice in our generation brought untold ~~sorrows and losses on~~ sorrow and loss upon mankind
>
> and
>
> to re-establish ~~the~~ faith ~~of men and women~~ in ~~basic~~ fundamental human rights, in the ~~sacredness~~ sanctity~~, essential worth, and integrity~~ and ultimate value of the human personality, in the equal rights of ~~individuals and of individual~~ men and women and of nations large and small,
>
> and
>
> ~~in the enlargement of freedom and the promotion of~~ to promote social progress~~,~~ and ~~in raising the~~ better standards of life ~~everywhere in the world~~ in larger freedom,
>
> and for these ends
>
> to practice tolerance and to live together in peace ~~and peaceful intercourse~~ with ~~each other~~ one another as good neighbours,
>
> In order ~~to make possible co-operation between~~ that nations may work together to maintain ~~for the maintenance of~~ international peace and security ~~necessary of these purposes~~,

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[2265] 'Draft Preamble to the Charter of the United Nations' in 'Files by country - Union of South Africa UNCIO' *United Nations Archive* S0596/Box 7/File 13.

[2266] These amendments were only circulated on or after 5 May 1945. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 7.

[2267] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 338.

[2268] 'Preamble to the Charter of the United Nations submitted by the South African delegation in revision of draft of April 26, 1945' in *United Nations Archive* S0596/Box 7/File 13 (The changes were not indicated on the original. The changes are noted in the thesis in strikethrough and underline for ease of reference). For the draft Preamble as proposed by the South African delegation, see also 'Documentation for meetings of Committee I/1' (11 May 1945) Doc 215 I/1/10 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 529 - 30.

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By the acceptance of principles and the institution of methods to ensure that armed force shall not be used save in the common interest ~~is only used in the interests of the community of nations, and not for national ends~~,

By the provision of means by which all disputes that threaten the maintenance of international peace and security shall be settled,

By the establishment of conditions under which justice and respect for the obligations of international law and treaties~~,~~ and fundamental human rights and freedoms~~,~~ can be maintained,

By the employment of international machinery for the promotion of the economic and social advancement of all peoples,

Agree to this Charter of the United Nations.'[2269]

The matter of the Preamble was assigned to the first of the four commissions established by the Conference to deal with various aspects. Commission I was concerned with 'General Provisions.'[2270] Commission I, in turn, assigned the matter of the preamble to the first of the technical subcommittees (Committee I/1/A), where detailed examination of the various clauses was to take place.[2271]

The Rapporteur of Subcommittee I/1/A, Farid Zeineddine of Syria, stated on 5 May 1945 that the subcommittee had set itself the goal of, among other things, to 'give the

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[2269] Thus, The draft selected as the basis for the Preamble stressed the determination of the High Contracting Parties to re-establish faith: '[I]n fundamental human rights, in the sacredness, essential worth and integrity of the human personality, in the equal rights of individuals and of individual nations, large and small, in the enlargement of freedom and the promotion of social progress and the possibility of raising the standard of life everywhere in the world.' The other human rights references in the draft were to '[T]he establishment of conditions under which justice and respect for the obligations of international law and treaties and fundamental human rights and freedoms can be maintained;' and to 'the employment of international machinery for the promotion of the economic and social advancement of all peoples.'

[2270] P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 59.

[2271] *Ibid*. Organisationally, the Conference was divided into four general committees, four commissions, and 12 technical committees. The general committees included the Steering Committee, consisting of the chairmen of all the delegations; the Executive Committee, consisting of the chairmen of the delegations of the Sponsoring Governments and ten other governments, including that of France; the Coordination Committee, composed of one representative of each state represented on the Executive Committee; and the Credentials Committee. The meeting of the Conference in plenary session and of the Commissions were open to the public; the meetings of the committees and sub-committees were open only to those with proper credentials. The four Commissions were set up with the following titles: Commission I (General Provisions); Commission II (General Assembly); Commission III (Security Council); and Commission IV (Judicial Organization). Committee I/1, dealt with the Preamble, Purposes and Principles. LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 12.

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Preamble a language and tone which leads its way to the hearts of men.'[2272] However, the Rapporteur also reminded those who felt 'uneasy' about the text that:[2273]

> [T]he Preamble had to be conceived under the . . . double attraction of the literary sense of harmony, rhythm and appealing moral beauty, and the juristic consideration of precision and logical sequence. Though the Preamble is one of a Charter for peaceful human endeavor, it is at the same time the Preamble of an international legal contract.[2274]

At the second meeting of Committee I/1 on 7 May, Smuts 'explained the purport of the preamble presented by his delegation. Smuts stressed the need for a statement of ideals and aspirations which would rally world opinion in support of the Charter.[2275] After discussion, the Committee agreed 'by acclamation' to adopt, in principle, the draft of the South African delegation 'as the basis for a preamble,' with the reservation that the final form should be agreed upon later.[2276]

Mazower states that, at San Francisco, Smuts 'had the satisfaction of seeing his text adopted unanimously, with a few modifications, as the preamble to the UN Charter itself.'[2277] However, the process of adopting the Preamble was considerably more controversial and complex than Mazower's statement would suggest. Smuts' draft was

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[2272] 'Report of Rapporteur, Subcommittee I/1/A (Farid Zeineddine, Syria), Section 3, to Committee I/1'(5 June 1945) Doc 785 [I/1/28] in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 358. Likewise, The Rapporteur of Committee I stated to Commission I that Committee 1 held from the outset that the Preamble should introduce the Charter and, by doing so: '[S]hould have harmony in ideas, the tone in words, and the light, which can awaken the imagination of men to the points at issue, kindle their feelings, and move them.' 'Report of Rapporteur of Committee 1 to Commission I' (9 June 1945) Doc 885 I/1/34 in *Ibid* 390.

[2273] 'Report of Rapporteur, Subcommittee I/1/A (Farid Zeineddine, Syria), Section 3, to Committee I/1'(5 June 1945) Doc 785 [I/1/28] in *Ibid* 358.

[2274] Similarly, the Rapporteur of Committee 1 stated on 9 June that the Preamble had to meet, at the same time, the requirements of the demand for juridical precision and logical sequence. 'Report of Rapporteur of Committee 1 to Commission I' (9 June 1945) Doc 885 I/1/34 in *Ibid* 391.

[2275] 'Summary report of second meeting of Committee I/1' (8 May 1945) Doc 133 I/1/7 in *Ibid* 277.

[2276] 'Summary report of second meeting of Committee I/1' (8 May 1945) Doc 133 I/1/7 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 277. The Rapporteur of Committee 1, in his report to Commission I stated that the Committee, deliberating in general discussion, 'started by accepting as a working basis the "Preamble" submitted by the Delegation of the Union of South Africa and introduced to the Committee by Field Marshal Smuts.' 'Report of Rapporteur of Committee 1 to Commission I' (9 June 1945) Doc 885 I/1/34 in *Ibid* 390; and 'Report of rapporteur of Committee 1 to Commission I' (13 June 1945) Doc 944 I/1/34(1) in 'UNCIO - Working papers - Preamble' *United Nations archives* File marked '5 June 1945/25 June 1945.' On 8 May 1945, a day dominated by news of the announcement of Victory in Europe, the *Manchester Guardian* carried a small piece from San Francisco reporting that 'General Smuts' preamble to the new world charter – his "declaration of human rights" – [had just been] accepted as a basis for further discussions.' As cited in S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55.

[2277] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 59.

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'harshly critizised' in both Committee I/1 and Commission I itself.[2278] Virginia Gildersleeve was assigned to represent the United States on two Committees, one of which was Committee I/1.[2279] She was a professor of literature, and thus cared deeply about the phraseology of the Preamble.[2280] She was also a 'profoundly' patriotic American. Therefore, she had a devout admiration for what she regarded as the 'perfect' Preamble to the United States Constitution.[2281]

Gildersleeve described the conflated Smuts-Webster draft that Smuts introduced on 7 May as a 'patchwork' that 'was far too long, ill-arranged in part, and occasionally couched in clumsy, awkward English.'[2282] According to Gildersleeve, the 'Latin sense of form' of Rolin, a Belgian delegate and Chairman of Commission I, was offended by the straggling and awkward sentences of the Smuts version.'[2283] The Smuts preamble contained 200 words, as against the 52 of the American Constitution's Preamble.[2284] Archibald MacLeish, then a United States Assistant Secretary of State, referred to Smuts' draft as 'literary and intellectual abortion.'[2285]

Gildersleeve's impression of Smuts, when he appeared in person to present his preamble to Committee I/1, was that he was 'a great man,' 'a glamorous figure . . . still slender and straight in spite of his age, in his marshal's uniform with his decorations.' According to Gildersleeve, Smuts urged the adoption of his preamble as the 'fulfilment of

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[2278] JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 7.

[2279] Gildersleeve states that she was much interested in the issue of the preamble and that she felt well-qualified to work on it. VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 330. Schlesinger describes Gildersleeve as 'the most retiring member of the United States delegation.' SC Schlesinger *Act of creation: The founding of the United Nations (A story of superpowers, secret agents, wartime allies and enemies, and their quest for a peaceful world)* (2003) 236.

[2280] *Ibid* 237.

[2281] VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 344. Her 'greatest difficulty' was that Smuts had already composed a preamble before leaving South Africa. This draft preamble Smuts took to London where the Commonwealth representatives 'changed it somewhat, adding to it and altering some of the wording.' *Ibid*.

[2282] *Ibid*.

[2283] *Ibid* 346.

[2284] *Ibid*) 345.

[2285] As quoted in SC Schlesinger *Act of creation: The founding of the United Nations (A story of superpowers, secret agents, wartime allies and enemies, and their quest for a peaceful world)* (2003) 236.

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his dream and crowning achievement of his life.' When the vote was called for, Smuts apparently stood, 'watching the delegates attentively, seeing how each would vote.'[2286]

After Smuts' preamble was unanimously adopted in principle, the delegates of the various nations 'fell to arguing strenuously' over the draft preamble, 'from the philosophical point of view, from the literary point of view, from the political point of view.'[2287]

Gildersleeve describes her experience with the Preamble as 'rather exciting and harrowing.'[2288] On her own initiative, Gildersleeve had decided to re-write Smuts' prose before he had even presented his draft to Committee I/1.[2289] In homage to opening phrase of the United States Constitution, her version started: 'We the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which the in our time has brought untold sorrow on mankind . . .'[2290] The first paragraph of the American proposal was adopted.[2291]

Gildersleeve also proposed the phrase 'to reaffirm faith in the dignity and value of every human being' as a substitute for Smuts' first two clauses, to wit, 'to re-establish faith in fundamental human rights, in the sanctity and ultimate value of human personality.' However, the drafting committee did not accept Gildersleeve's proposal *in toto*. Smuts' 'faith in fundamental rights' remained, and Gildersleeve's 'dignity and value of every human being' replaced Smuts' 'sanctity and ultimate value of the human personality' only.[2292]

[2286] VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 344.

[2287] *Ibid* 346.

[2288] *Ibid* 344.

[2289] SC Schlesinger *Act of creation: The founding of the United Nations (A story of superpowers, secret agents, wartime allies and enemies, and their quest for a peaceful world)* (2003) 237.

[2290] As quoted in *Ibid* 237. Hancock writes that, At San Francisco, 'reproachful American idealists' complained that the Smuts draft, as it became known to Virginia Gildersleeve's chagrin, lacked 'force and fire.' The aspirations of humanity, they argued, deserved better treatment. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432.

[2291] Interestingly, the opening phrase of Smuts' original draft was much closer to that of Gildersleeve, than was that of Webster's conflation. In deference to the conventions of diplomatic practice, Webster identified the legal personalities subscribing to the Charter, not as 'the United Nations,' as Smuts had suggested, but as 'The High Contracting Parties.' This opening phrase was undoubtedly correct, but it destroyed the 'force and fire' of Smuts' opening lines. *Ibid*.

[2292] See S Moyn, "Why is Dignity in the Charter of the United Nations?" *Humanity* 3 June 2014 http://www.humanityjournal.net/blog/03/06/14 (12 August 2014). Aside from altering 'value' to 'worth,' and Smuts' change of 'human being' to 'human person' (see below), the delegates did not make any other significant changes to this part of the Preamble. *Ibid.*

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Gildersleeve had carried her point with regard to the opening phrase, 'We the peoples . . .'[2293] and the phrase 'dignity and value of every human being.' However, this was to be her last significant victory.[2294] She claimed that the nations, which for political reasons wanted to support South Africa, generally defended the Smuts wording.[2295] 'Of course,' Gildersleeve continued:[2296]

> [I]t had always been understood in all our discussions that it was the 'Smuts Preamble' and that the marshall was to have credit for it, whatever form it finally took . . . I still look upon it with sorrow . . . Throughout the Preamble discussions I had become weary of having the name of Marshal Smuts held over us.

In the thirteenth meeting of Committee I/1 on 5 June 1945, the South African delegate on that committee, HT Andrews, speaking on behalf of Smuts, stated that, upon reading the draft text of the Preamble as it was returned by the Subcommittee,[2297] Smuts commented that it was 'very nice as the father of the baby still to recognize it after others had had the

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[2293] In his report to Commission I, the Rapporteur of Committee I stated that the phrase 'We the the peoples of the United Nations' was suggested to Committee 1 by the United States delegation with reference to the 'leading words in the Constitution of the United States.' Report of Rapporteur of Committee 1 to Commission I' (9 June 1945) Doc 885 I/1/34 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 391. However, this phrase was not universally popular. The Netherlands delegate raised the possibility of constitutional difficulty inasmuch as in the Netherlands, and possibly the United Kingdom and several other European states, sovereignty was not vested in the people under the Constitution, and the Crown, not the people, concluded treaties. It was the sense of the meeting, however, that the phrase, 'through our representatives assembled at San Francisco,' would obviate the difficulty foreseen by the Netherlands delegate. 'Summary report of the thirteenth meeting of Committee I/1' (6 June 1945) Doc 817 I/1/31 in *Ibid* 366. See also 'Summary report of the fifteenth meeting of Committee I/1' (12 June 1945) Doc 926 I/1/36 in *Ibid* 421.

[2294] SC Schlesinger *Act of creation: The founding of the United Nations (A story of superpowers, secret agents, wartime allies and enemies, and their quest for a peaceful world)* (2003) 237. Glidersleeve conjectures that, the evening following the first day of deliberations, Smuts instructed the South African to defend his version more zealously. VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 346. According to Schlesinger, 'Smuts and his allies counterattacked and reattached much of his lost text to the preamble.' Gildersleeve's ringing peroration, nonetheless, remained. SC Schlesinger *Act of creation: The founding of the United Nations (A story of superpowers, secret agents, wartime allies and enemies, and their quest for a peaceful world)* (2003) 237.

[2295] '[A]nd this, unfortunately,' contends Gildersleeve, 'deprived us of our best natural ally in the cause of good English and good literature, the United Kingdom.' The United Kingdom, 'as a rule, tried to please the Dominions.VC Gildersleeve *Many a good crusade: Memoirs of Virginia Chrocheron Gildersleeve* (1954) 347. Of course, Gildersleeve conveniently ignores the fact that Charles Webster, a member of the British delegation, had edited the Smuts draft preamble before it was presented at San Francisco. Gildersleeve also stated that the version of the preamble passed by Committee I/1, and afterwards by Commission I, contained 'a good deal of the repetition and clumsiness of phrasing of the original Smuts version,' although the latter hand been slightly reduced in length to 178 words, instead of 200.

[2296] *Ibid* 347, 349.

[2297] See 'Draft Preamble as approved by Committee I/1/A' (31 May 1945) WD 62 I/1/A/18 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 694.

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handling of it.'[2298] Substantively, Smuts had two observations: (i) he would prefer the phrase 'twice in our lifetime' in the first paragraph to be replaced with 'in our time;' and (ii) with regard to the second paragraph, he would prefer it to state 'in the dignity and value of the human person' instead of 'every human being.'[2299]

With reference to the first of Smuts' comments, the Ukrainian representative and Chairman of Committee I/1, Mr Manuilsky, made a 'spirit defense' of the phraseology retained in the Subcommittee draft. He pointed out that never in history had the peoples of the world known two such wars as had afflicted them in the past generation.[2300] Following discussion by various members, Andrews, the South African representative, indicated that he would not insist upon the acceptance of Smuts' observation.[2301] Smuts' second observation, to replace 'every human being' with 'the human person,' was accepted unanimously.[2302] Thus, the first two paragraphs of the text of the Preamble, as approved by Committee I/1, read:[2303]

> WE THE PEOPLES OF THE UNITED NATIONS
>
> determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
>
> to reaffirm faith in fundamental human rights, in the dignity and value of the human person, in the equal rights of men and women and of nations large and small . . .

[2298] 'Summary report of the thirteenth meeting of Committee I/1' (6 June 1945) Doc 817 I/1/31 in *Ibid* 365. In his report of 20 July 1945, Andrews confirmed that the final text emerged substantially as Smuts had introduced it. Despite attempts by other delegations to improve upon it, the version adopted in the Plenary contained only slight textual and grammatical alterations, 'changes which in fact brought it back very much to the Prime Minister's original draft.' Even the portions excised found a place in the first two articles of the Charter. According to Andrews, the principal alterations are the removal of the slightly modified reference to 'respect for the obligations of international law and treaties' to the aims of the Charter, and the deletion of the sentence on the settlement of international disputes, which was a Foreign Office addition. as quoted in JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 7, 8, 8 n19.

[2299] 'Summary report of the thirteenth meeting of Committee I/1' (6 June 1945) Doc 817 I/1/31 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 365.

[2300] *Ibid* 366.

[2301] '*Ibid*.

[2302] *Ibid*.

[2303] 'Appendix to Rapporteur's report, Committee I/1' (11 June 1945) Doc 908 I/1/34(a) in *Ibid* 402 (Emphasis in the original).

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Smuts' preference that the second paragraph should state 'in the dignity and value of the human person,' instead of 'every human being,' is significant.[2304] Smuts likely suggested this change acutely cognisant of the potential implications of the phrase 'every human being' to South Africa's domestic racial policies, and thus to the ratification of the Charter by the South African Parliament. Writing from the Conference to his deputy, Jan Hofmeyr, in South Africa, Smuts assessed the atmosphere in San Francisco as follows:[2305]

> I find not only power politics well to the fore, but also a strong humanitarian tendency, finding expression in provision for equal rights all round and other somewhat embarrassing proposals so far as we [are] concerned.

The phrase 'every human being' is unambiguous. It connotes literally every human being on earth, regardless of creed or colour. Smuts suggested a retreat to the more abstract - and to him, more philosophical - 'the human person.' The latter phraseology came much closer to his original formulation of 'the human personality.' As set forth below, this emendation deserves exploration, since the concept of 'human personality' was, in Dubow's words, 'a key code word in Smuts' philosophy of organic holism.'[2306]

On 6 June 1945, Robert McClintock, secretary of Committee I/1, submitted to the Coordination Committee the text of the 'Preamble to the Dumbarton Oaks Proposals,' approved by Committee I/1 on 5 June 1945.[2307] This text read as follows, and the changes indicated referred to alterations from the text submitted by Subcommittee I/1/A:[2308]

> WE THE PEOPLES OF THE UNITED NATIONS
>
> determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
>
> to reaffirm faith in fundamental human rights, in the dignity and value of the human person, in the equal rights of men and women and of nations large and small, and
>
> to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law ~~of international law and treaties~~ can be maintained, and

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[2304] My emphasis.

[2305] Smuts to JH Hofmeyr 6 May 1945 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 534.

[2306] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 56 - 57.

[2307] Based upon the preliminary draft of the South African delegation, which was approved in principle by Committee I/1 on 7 May 1945, and on the text submitted by the Subcommittee I/1/A on 31 May 1945.

[2308] 'UNCIO - Charter material and related papers - approved text of the Charter by article - Preamble' *United Nations Archive* S 1019/Box 2/File 1.

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to promote social progress and better standards of life in larger freedom,

and for these ends

to practice tolerance and live together in peace as good neighbors, and

to unite our strength to maintain international peace and security, and

by the acceptance of principles and the institution of methods to ensure that armed force shall not be used, save in the common interest, and

by the employment of international machinery for the promotion of economic and social advancement of all peoples

THROUGH OUR REPRESENTATIVES ASSEMBLED AT SAN FRANCISCO AGREE TO THIS CHARTER[2309]

Despite the sometimes withering criticism of the text, great deference was paid to Smuts as the draft Preamble worked its way through the various Subcommittees and Committees. Press release no 208 of 6 June 1945 stated that Committee I/1 the previous evening approved the text of the Preamble to the Charter, based largely on the draft by Smuts. The press release included a copy of the text, as amended in Committee.[2310]

With reference to Smuts, the Rapporteur of Subcommittee I/1/A did not believe that 'the original author or the Preamble would feel dissatisfied with the present text.'[2311] He personally felt that it was 'a real satisfaction to us to see him approve of it.'[2312] On 9 June, the Rapporteur of Committee 1 likewise expressed this sentiment: 'I have the sincere hope that the original author of the Preamble would feel satisfied with the present text, as we all wish him to be.'[2313]

In the first meeting of Commission I on 14 June 1945, the President of the Commission described the draft Preamble as 'the basis of the ideology of the International

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[2309] This was also the the approved text of the Preamble, as of 13 June 1945, as appended to the Rapporteur's report, Committee I/1. 'Appendix to Rapporteur's report, Committee I/1' (13 June 1945) Doc 945 I/1/34(1)(a) in 'UNCIO - Working papers - Preamble' *United Nations archives* File marked '5 June 1945/25 June 1945' (Underlining in the original).

[2310] 'UNCIO - Working papers - Preamble' *United Nations archives* File marked '5 June 1945/25 June 1945.'

[2311] 'Report of Rapporteur, Subcommittee I/1/A (Farid Zeineddine, Syria), Section 3, to Committee I/1'(5 June 1945) Doc 785 [I/1/28] in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 358.

[2312] *Ibid*.

[2313] 'Report of Rapporteur of Committee 1 to Commission I' (9 June 1945) Doc 885 I/1/34 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 391.

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Organization being built.' He added that if it was 'one of the most interesting and most fruitful contributions that have been made to the world Charter.'[2314] The President continued:[2315]

> At one of our very first meetings, [Smuts] called our attention to the fact that a document like the Charter - whatever efforts we might make to define the Organization - could only hope to succeed if it found support in the public opinion of mankind all over the world. Because of that, it was essential that it should not only be drafted in as precise terms as we could find, but that there should be great warmth and simplicity, at least in the first lines, so that we may hope to find an answer in the hearts of humanity.

During discussion on Commission I, the United States delegate, Virginia Gildersleeve, saw her opportunity for a renewed attempt at major revisions to the 'Smuts draft,' as it had become known to her chagrin. She expressed the hope that the Preamble might be 'so simple and clear and moving that it might hang upon the wall of every home' in all the member states, 'and be understood by common man everywhere, and warm their hearts and strengthen them after the long exhaustion and sorrow of war.'[2316]

However, she stated, the English text that had been prepared fell short of that goal. Based upon the original draft of the 'illustrious chairman of the South African delegation, Field Marshal Smuts,' it had been added to by others, in part cut down, reworded, and rearranged.[2317] Gildersleeve believed the text to be 'somewhat complicated and difficult to follow,' the phrasing to be 'sometimes awkward' and repetitive.[2318] Its worst flaw was that the 'English words and rhythm rarely stir[red] the heart.'[2319] She trusted that the Coordination Committee would 'make it more worthy of the distinguished name of the

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[2314] 'Verbatim minutes of first meeting of Commission I' (25 June 1945) Doc 1006 I/6 in *Ibid* 2.

[2315] *bid.*

[2316] *Ibid* 19.

[2317] *Ibid.*

[2318] *Ibid.*

[2319] *Ibid.*

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great Field Marshal which will always be associated with it,' and also more worthy of its place as the foreword and the symbol of this historic Charter.[2320]

However, the Coordination Committee and the Steering Committee, under the press of events and time, 'but with Smuts very much in contact,' put the finishing touches to the text without the substantial revisions Gildersleeve and others had hoped to achieve. On Wednesday, 20 June 1945, Charles Kingsley Webster wrote in his diary:[2321]

> . . . at 4.45 I went with Lord H[alifax] to the Steering [Committee] . . . The room was crowded. The discussions were farcical. A new draft of the Preamble was distributed which A[rchibald] MacLeish had done with Smuts. But it left out respect for treaties & was challenged by Chile, Peru and Gromyko. Smuts made a good defence . . . MacKenzie King . . . made some sensible drafting suggestions . . . It still bears a good deal of trace of my early draft but it is not a very good document. However, it is not as bad as some people say, who would like the glory of drafting one for themselves.

In the Steering Committee on 23 June, Smuts reported that the Coordination Committee had a number of difficulties with the language of the preamble and had consulted him about three alterations it proposed to make.[2322]

In regards the second paragraph - 'to reaffirm faith in fundamental human rights, in the dignity and value of the human person' - the Coordination Committee believed that the word 'value' had an economic connotation. It suggested the word 'worth,' which Smuts had used in his original draft, as much better. Smuts supported the substitution of the word 'worth' for 'value.'[2323]

[2320] Gildersleeve also expressed the hope that the Jurists and the Coordinating Committee' would retain the opening words that the American delegation had proposed and Commission I/1 accepted: 'We the peoples of the United Nations.' *Ibid*. In the fifth meeting of Commission I, on 23 June 1945, the Rapporteur of the Commission, Francisco Delgado of the Philippine Commonwealth, stated that the general feeling of the meeting, as voiced by the United States delegate, and reiterated by the delegate of New Zealand, was that 'the phraseology of the Preamble needed considerable improvement so as to imbue it with more soul and greater popular appeal.' In particular, the United States delegate expressed the desire that the opinion phrase, 'We the peoples of the United Nations,' be retained by the Coordination Committee. 'Verbatim minutes of fifth meeting of Commission I' (24 June 1945) Doc 1187/I/13 in 'UNCIO - Working papers - Preamble' *United Nations archives* File marked '5 June 1945/25 June 1945.

[2321] As quoted in PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 69.

[2322] 'Summary report of eleventh meeting of Steering Committee' (28 June 1945) Doc 1213 ST 23 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol V Steering Committee* 307.

[2323] *Ibid*.

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A second difficulty was found in the language, 'by the employment of international machinery for the promotion of economic and social advancement of all peoples.'[2324] This sentence, Smuts observed, 'had no syntax or grammatical connection; it was without context.'[2325] Smuts therefore supported the proposal of the Belgian delegate, Mr. Rolin, that the phrase 'by the employment of international machinery' be replaced with 'to employ international means.'[2326]

A third difficulty arose with regard to the phrase, 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.'[2327] In the opinion of the Coordination Committee, this language was 'intricate, complicated, and legalistic, which only lawyers would understand.'[2328] The object of the preamble, Smuts reiterated, was 'to have simple, clear language that the man in the street can read and understand and that will appeal to him.'[2329] Smuts supported a proposal by the Belgian delegate in this regard that referred to the word 'pledge,' as 'pledge' would include treaties - 'in fact all undertakings.'[2330] However, since some delegations objected to the omission of the word 'treaty,' Smuts would have no qualms about including it.[2331]

The revised text of the Preamble to the Charter, submitted by the President of the First Commission on 23 June 1945, and adopted at the plenary session of the Conference on 25 June were as follows:[2332]

[2324] *Ibid.*

[2325] *Ibid.*

[2326] *Ibid.*

[2327] *Ibid.*

[2328] *Ibid.*

[2329] *Ibid.*

[2330] *Ibid.*

[2331] *Ibid.*

[2332] 'United Nations Conference on International Organization: Papers of the Secretary-General' *United Nations Archive* S 1020/Box1/File 2. See also P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 59; B Reinalda *Routledge history of international organizations: From 1815 to the present day* (2009) 286.

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THE CHARTER OF THE UNITED NATIONS

PREAMBLE

WE THE PEOPLES OF THE UNITED NATIONS

determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth[2333] of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for law and the pledged word can be maintained, and

to promote social progress and better standards of life in larger freedom,

and for these ends

to practice tolerance and live together in peace as good neighbors, and

to unite our strength to maintain international peace and security, by the acceptance of principles and the institution of methods to insure that armed force shall not be used, save in the common interest, and

to employ international means[2334] for the [promotion of][2335] economic and social advancement of all peoples

have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective governments, through representatives assembled in the City of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be know as the United Nations.

As part of a long diary entry on 26 June 1945, Charles Kingsley Webster wrote:[2336]

The Preamble has been a dreadful struggle. In its final form it still contains one or two sentences deriving from my original draft. Indeed about 1/2 of it is so derived though the words are changed a good deal. The rest is Smuts much amended. The final result is not so bad as those who wished to substitute their own words pretended to believe.

[2333] The word 'worth' is underlined by hand in pencil on the original.

[2334] The words 'to employ' and 'means' are underlined in pencil on the original.

[2335] The words 'promotion of' are hand-written in pencil on the original.

[2336] As quoted in PA Reynolds & EJ Hughes *The historian as diplomat: Charles Kingsley Webster and the United Nations 1939 - 1946* (1976) 70.

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Of course, the concept of 'human rights' surfaced in other parts of the Charter, and would have been enshrined in it on the basis of amendments to the Dumbarton Oaks proposals. But, the debates at San Francisco show that the force of the original suggestion was regarded as emanating from Smuts.[2337] Both at the Conference and subsequent, Smuts received much of the credit as the author of the Preamble, despite the contribution of Webster, Gildersleeve, and others. Ricardo Alfaro of Panama, the Rapporteur of the Second Commission, began his report with a 'warm and appreciative' reference to the president of the Commission:[2338]

> Commission II has had the privilege and the honor of functioning under the Presidency of Field-Marshal Jan Christian Smuts, that great elder statesman of the Conference . . . whom we will always remember, and future generations will also remember and admire and render tribute to, as the author of the inspiring Preamble of the Charter by which we expect to organize a world of right and peace.

The British Prime Minister, Clement Attlee, in reporting back to the House of Commons on 22 August 1945, stated:[2339]

> The Preamble we owe largely to Field Marshal Smuts. His authoritative contributions to the discussions at San Francisco were the result of that union of lofty ideals and practical wisdom that we have come to expect of him. I remember that there was a complaint that the Dumbarton Oaks proposals formed a rather frigid document. I pointed out at the time that it was the work of officials who were not expected to be eloquent, but I think it will be agreed that that defect had been cured at San Francisco. Field Marshal Smuts brought before the Conference a draft which had been prepared by the Foreign Office, and that Preamble was very carefully considered and amended. But although amendments were made the substance and spirit of the Preamble are derived from the Field Marshal's draft.

The similarities between the three main stages of the development of the Preamble are set forth in the table below.[2340]

[2337] JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 321.

[2338] As *verbatim* set forth in JE Harley *Documentary textbook of the United Nations* (1947) 480 - 481.

[2339] As quoted in S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 Journal of Contemporary History 55.

[2340] Christof Heyns has also prepared an insightful summary of the differences and similarities between the three main stages of the development of the Preamble. CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law*

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Smuts' proposal at meeting of Dominium Prime Ministers (6 April 1945)	Final submission by South African delegation at San Francisco (3 May 1945)	Preamble of the Charter as adopted (26 June 1945)
We the United Nations . . .	The High Contracting Parties . . .	We the Peoples of the United Nations . . .
[A]ssembled in Conference to . . . prevent a recurrence of the fratricidal strife . . .	Determined to prevent a recurrence of the fratricidal strife . . .	determined to save succeeding generations from the scourge of war . . .
. . . which has now twice in our generation brought untold sorrows and losses on mankind . . .	. . . which has now twice in our generation brought untold sorrow and loss upon mankind . . .	. . . which twice in our lifetime has brought untold sorrow to mankind . . .
Chapter 1 - The Common Faith 1.We declare our faith in basic human rights, in the sacredness, essential worth, and integrity of the human personality, and affirm our resolve to establish and maintain social and legal sanctions for safeguarding the same.	. . . to re-establish faith in fundamental human rights, in the sanctity and ultimate value of the human personality . . .	. . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . .
2. We believe in the practice of tolerance . . .	. . . to practice tolerance and to live together in peace with one another as good neighbours . . .	. . . to practice tolerance and live together in peace as good neighbors . . .
. . . in the equal rights of individuals and of individual nations large and small . . .	. . . in the equal rights of men and women and of nations large and small . . .	. . . in the equal rights of men and women and of nations large and small . . .
3.We believe in the enlargement of freedom and promotion of social progress, and in raising the standards of life, so that there may be freedom of thought and of expression and religion, as well as freedom from want and fear for all . . .	. . . to promote social progress and better standards of life in larger freedom . . .	. . . to promote social progress and better standards of life in larger freedom . . .
	By the provision of means by which all disputes that threaten the maintenance of international peace and security shall be settled	. . . to unite our strength to maintain international peace and security, by the acceptance of principles and the institution of methods to insure that armed force shall not be used, save in the common interest . . .

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Smuts' proposal at meeting of Dominium Prime Ministers (6 April 1945)	Final submission by South African delegation at San Francisco (3 May 1945)	Preamble of the Charter as adopted (26 June 1945)
	By the establishment of conditions under which justice and respect for the obligations of international law and treaties and fundamental human rights and freedoms can be maintained . . .	
	By the employment of international machinery for the promotion of the economic and social advancement of all peoples,	. . . to employ international means for the promotion of economic and social advancement of all peoples . . .

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At the final plenary session of the Conference on 26 June 1945, Smuts was the penultimate speaker, followed by President Truman who brought the final plenary session to a close.[2341] In his address Smuts stated:[2342]

> What hopes have we delegates ourselves of our labors? If I as an old veteran of the wars and peace conferences, extending for almost half a century, should have to answer this question, I would do so as follows:
>
> *Our Charter is not a perfect document*. It is full of compromises over very difficult and tangled problems. But at least it is a good practical workmanlike plan for peace - a very real and substantial advance on all previous plans for security against war.
>
> It provides for a peace with teeth; for a united front of peace-loving peoples against future aggressors; for a united front among the great powers backed by the forces of the smaller powers as well.

Indeed, not simply generally, but specifically with regard to the concept of 'human rights,' too, the Charter was 'not a perfect document.' Paul Gordon Lauren observes that a more detailed reading of all of the provisions of the Charter, revealed that the politics and diplomacy of the San Francisco Conference 'had produced important qualifications,

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[2341] JE Harley *Documentary textbook of the United Nations* (1947) 497. It seems to have been contemplated initially that, at the closing plenary session, there would only be three speakers: Edward Stettinius, Smuts, and President Truman. At the behest of Huntington Gilchrist, the executive officer of Commission II, discreet inquiries were made to members of the Commission II secretariat regarding the advisability of this plan. The proposal to have only Smuts speak at the closing plenary session, in addition to the two Americans, proved to not be without controversy. Hugues Le Gallais (Luxembourg), the rapporteur of Committee II/4, believed that it would be desirable to only representatives of the great powers speak at the closing session, as was 'normal in international conferences.' An alternative could be addresses by the presidents of all four Commissions, and not just Smuts alone. Peter Fraser (New Zealand), chairman of Committee II/4, suggested two alternatives. If only Stettinius and Truman spoke, 'everybody would be entirely satisfied.' Otherwise, Fraser believed, the speakers should include representatives from other parts of the world, 'including necessarily Latin America, China, and Russia.' Fraser requested that specific attention be given to this question: If Smuts, who was the representative of a junior dominion, was asked to speak, the full British delegation should be consulted. Victor Andrade (Dominican Republic), chairman of Committee II/2, suggested that a simple ceremony would be desirable. He proposed that there should be a response to Truman's speech by one of the other sponsoring powers, and by one delegate chosen by the Steering Committee from among the governments outside the sponsoring group. Sir Ramaswami Mudaliar (India), chairman of Committee II/3, expressed doubt about having Smuts speak as a 'possible representative of the governments other than the sponsoring powers.' On 6 June, Gilchrist reported to the Executive Secretary that the Rapporteur and the Assistant Secretary-General of Commission II [Octavio Mendez Pereira (Panama) and CL Simpson (Liberia), respectively] believed that speeches at the final plenary session should be strictly limited. They would be satisfied if Stettinius and Smuts made the only speeches. However, he also asked that the Executive Committee bear in mind, if possible, the 'general feeling' of the Commission II secretariat that Smuts 'has perhaps played somewhat too prominent a role as the spokesman for the middle and smaller states.' Memorandum from H Gilchrist to Executive Secretary 6 June 1945 in 'UNCIO - Working papers - Commissions and technical committees' *United Nations archives* S 1018/Box 6/ File 3.

[2342] As quoted *verbatim* in JE Harley *Documentary textbook of the United Nations* (1947) 498 - 499 (my emphasis).

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omissions, and other problems that would confront the evolution of international human rights for many years to come.'[2343]

Firstly, the Charter did not contain a definition of the phrase 'human rights.' Secondly, politics and diplomacy, specifically the growing tension between the democratic and capitalist states of the West and the communist states, prevented the Charter from delineating any details or conditions with regard to civil and political rights, or social and economic rights. The language of the Charter remained 'generous but vague' with regard to human rights. A third and much greater issue was that of enforcement. Representatives of the Great Powers indicated the willingness to include words and statements of principle regarding human rights, but not provisions for practical and effective enforcement of these principles.[2344]

On the other hand, however, never before in history had any treaty ever given human rights such as prominent place as did the Charter of the United Nations.[2345] The Charter eloquently espoused responsibilities for the United Nations in the area of international human rights. With 'unparalleled specificity for a treaty of this wide-ranging nature,' the Charter set forth provisions against discrimination on the basis of race, gender, language, and religion.[2346] This would become a key to the binding authority of the human rights regime upon states that would ratify the Charter and thus become members of the United Nations.

[2343] PG Lauren *The evolution of international human rights: Visions seen* (2003) 191.

[2344] *Ibid*. Despite the enthusiastic attribution of authorship to Smuts, it is clear that the impact of the Preamble had been watered down. The word 'reestablish' in Smuts' draft, which could have required member states to 'establish' human rights standards in the first place, was changed to the milder 'reaffirm,' which could be read as requiring states only to make affirmative statements. In keeping with the dilution of states' responsibilities in this area, Smuts' phrase, 'By the establishment of conditions under which . . . respect for . . . human rights . . . can be maintained,' was amended to the much weaker, 'by the employment of international machinery for the promotion of economic and social development. Smuts' proposals would have required affirmative action by states to establish conditions for the maintenance of respect for human rights. On the other hand, the amended formulation was premised on the future creation of international machinery. This rendered the implementation of human rights uncertain, until at least adequate international machinery had been created. The language, as adopted, also did not require states to go any further than 'promotion.' Jhabvala argues that this weakening of the preamble was consistent with the views held by many states at San Francisco, that the protection of human rights was essentially a domestic matter and, therefore, best left to each member state to achieve in its own way. F Jhabvala 'The drafting of the human rights provisions of the UN Charter' (1997) 44 *Netherlands International Law Review* 7.

[2345] PG Lauren *The evolution of international human rights: Visions seen* (2003) 190. Mazower, agrees that the Charter did 'highlight human rights in an entirely unprecedented fashion,' both in the Preamble and the main body of the Charter itself. M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 393.

[2346] PG Lauren *The evolution of international human rights: Visions seen* (2003) 191.

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The inclusion of human rights provisions in the Charter undoubtedly changed the parameters of the debate. It introduced radical new principles into international law and world politics, thereby seeing the world on a path that would be remarkably different from the immediate past.[2347]

As stated, the topic of human rights did not occupy much time or attention at the Paris Peace Conference.[2348] In contrast to the League Covenant, which was silent on human rights, and the Dumbarton Oaks Proposals, with but a single reference to human rights, the concept of human rights now constituted 'a central theme' throughout the United Nations Charter.[2349] The phrase 'human rights' gained weight through repetition and context. The Charter mentions human rights no less than seven times:[2350]

(i) Unlike the Dumbarton Oaks proposals, the Charter opened with a Preamble, the second paragraph of which reads:

> [T]o reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .

(ii) The purposes of the United Nations, as set forth in Chapter I, include:

> [T]o achieve international co-operation in solving international problems of economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion . . .

(iii) Article 13(1)(b) empowers the General Assembly to initiate studies and make recommendations:

> [A]ssisting in the realisation of human rights and fundamental freedom for all without distinction as to race, sex, language or religion.

[2347] F Jhabvala 'The drafting of the human rights provisions of the UN Charter' (1997) 44 *Netherlands International Law Review* 2.

[2348] E Luard 'The origins of the international concerns over human rights' in E Luard (ed) *The international protection of human rights* (1967) 14.

[2349] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 340.

[2350] JP Humphrey 'The UN Charter and the Universal Declaration of Human Rights' in E Luard (ed) *The international protection of human rights* (1967) 41. For a detailed treatment of each of these provisions, see *Ibid* 41 - 46; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 262 - 263. See also J Blaustein 'Human rights: A challenge to the United Nations and to our generation' in AW Cordier & W Foote (ed) *The quest for peace: The Dag Hammarskjöld memorial lectures* (1965) 316; Morsink T*he Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 2 - 3; F Jhabvala 'The drafting of the human rights provisions of the UN Charter' (1997) 44 *Netherlands International Law Review* 5.

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(iv) Pursuant to Article 55, the United Nations were to promote:

[U]niversal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.[2351]

(v) Article 62(2) empowers the Economic and Social Council to:

[M]ake recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

(vi) Article 68 requires that the Economic and Social Council 'shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.'

(vii) The seventh and last explicit reference to human rights in the Charter in is Article 76, where one of the basis objectives of the trusteeship system is declared to be:

[T]o encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to encourage recognition of the interdependence of peoples of the world.

The ideas expressed in the Charter of the United Nations also 'anchored and inspired' the drafting of the Preamble to the Universal Declaration.[2352] Moreover, the passage in the Preamble to the Charter, holding the peoples of the United Nations determined 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person,' is either

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[2351] The fourth reference, in Article 55, should be read together with Article 56, which in all likelihood creates the only clear legal obligation in the Charter on members to promote respect for human rights. Article 56 declares that the 'all members pledge themselves to take joint and separate action on co-operation with the Organization for the achievement of the purposes set forth in Article 55. Article 55, in turn, states that the United Nations shall promote, among other things, 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,' with a view to the creation of conditions of stability an well-being which are necessary for peaceful and friendly relations among nations based upon respect for the principle of equal rights and self-determination of peoples.

[2352] J van Aggelen 'The preamble of the United Nations Declaration of Human Rights' (1999 - 2000) 28 *Denver Journal of International Law and Policy* 133. In addition to helping lead the way to the Declaration's drafting, the United Nations Charter's language was mirrored in the Declaration. For example, the second preambular paragraph of the Charter reads: '[T]o reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .' As set forth above, the author of this paragraph, Smuts, presented his draft to the San Francisco Conference in a slightly different form. Thus, 'the spirit of [Smuts'] words remained intact, although the text of his proposal was changed.' In the preamble to the Universal Declaration, Smuts' proposal was renewed and integrated into the final version. Although some words were changed, in the text of the Declaration adopted on 10 December 1948, the gravamen of his proposal remained as the fifth preambular paragraph. Van Aggelen notes that this proposal is referred to as the 'Smuts preamble.' *Ibid* 133, 134.

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quoted, paraphrased, or referred to in nearly all of the post-war human rights instruments.[2353]

4. The name of the new post-war international organisation

It was during Churchill's visit to Washington in December of 1941, that Roosevelt 'hit upon the term "United Nations"' for the Allied war-time alliance, as a more inspiring alternative to the then current 'Associated Powers,' or Churchill's proposed 'Grand Alliance,' which harked back too strongly to the 'Holy Alliance' of the Concert of Europe.'[2354] This name was given recognition in the Declaration of United Nations of 1 January 1942.[2355]

From this point onward, the term 'United Nations' came to connote the wartime alliance against the Axis and Japan. It was also frequently referred to in this sense by Allied politicians an propaganda.[2356] In this form it also seeped into legal and diplomatic usage. The first was Italy in 1943, which formally surrendered to 'the armed forces of the United Nations;' the Romanian armistice the following year noted that Romania 'had withdrawn from the war against the United Nations;' and in May of 1945, President Truman announced that the 'forces of Germany have surrendered to the United Nations.'[2357]

[2353] C Beitz, 'Human Dignity in the Theory of Human Rights: Nothing But a Phrase?' (2013) 41 *Philosophy and Public Affairs* 265. Specifically, in addition to the Universal Declaration of Human Rights (Preamble, Articles 1, 22, and 23), references to this passage can be found in the following core international, as well as regional, human rights instruments: International Convention on the Elimination of All Forms of Racial Discrimination (Preamble, Article 5(2)); International Covenant on Civil and Political Rights (Preamble, Article 10(1)); International Covenant on Economic, Social and Cultural Rights (Preamble, Articles 5(2), 13(1)); Convention on the Elimination of All Forms of Discrimination Against Women (Preamble); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Preamble); Convention on the Rights of the Child (Preamble, Articles 23(1), 28(2), 37(c), 39, 40(1)); International Convention for the Protection of All Persons from Enforced Disappearance (Preamble, Articles 19(2), 24(5)(c)); Convention on the Rights of Persons with Disabilities (Preamble, Articles 1, 3(a), 8(a), 16(4), 24(a), 25(d)); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Preamble); Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Preamble); Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Preamble); American Convention on Human Rights (Preamble, Articles 5(2), 6(2), 11(1)); African Charter on Human and Peoples' Rights (Preamble, Article 5); European Convention on Human Rights (Preamble, Protocol No. 13); Charter of Fundamental Rights of the European Union (Preamble; Articles 1, 25, 31(1)).

[2354] M Mazower *Governing the world: The history of an idea* (2012) 197 - 198.

[2355] LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 58. As set forth in 1.3 below, this Declaration created a military coalition of 26 nations to consolidate the efforts of the countries that opposed the Axis powers, and to pursue the aims expressed in the Atlantic Charter, under the name of the 'United Nations.'

[2356] M Mazower *Governing the world: The history of an idea* (2012) 197.

[2357] *Ibid* 198.

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Before the United Nations became a peacetime organisation, therefore, it was a wartime alliance.[2358]

It would seem that Smuts was the first statesman to have used the term 'United Nations' specifically in connection with the new post-war international organisation.[2359] In his address to both Houses of the British Parliament on 21 October 1942, Smuts stated:[2360]

> [The 'United Nations] is a new conception much in advance of the old concept of a League of Nations.'[2361] We don not want a mere League, but something more definite and organic, even if to begin with more limited and less ambitious than the League. 'The United Nations' is itself a fruitful conception, and on the basis of that conception practical machinery for the functioning of an international order could be explored.[2362]

It was next suggested in the Dumbarton Oaks Proposals that the new organisation should be given the name 'The United Nations.'[2363] At the San Francisco Conference, on 7 June 1945, Robert McClintock, secretary of Committee I/1, informed the Coordination Committee that Committee I/1, on 7 June 1945, 'unanimously and by acclamation, out of homage to the memory of the later President Roosevelt, had adopted the name "THE UNITED NATIONS" for the world Security Organization.'[2364] While it was open to objection as limiting the agreement to the Allies in the war, and thus excluding neutrals, it was intended to mark the common effort of nations which 'had saved civilisation,' and the belief that the close union would continue in the future.

[2358] *Ibid* 197.

[2359] See, for example, LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 58. See also N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 41 - 42.

[2360] JC Smuts *Toward a better world* (1944) 263.

[2361] *Ibid*.

[2362] Smuts used the term 'United Nations' no less than five times in his address. JC Smuts *Toward a better world* (1944) 248 - 265.

[2363] LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 58.

[2364] 'UNCIO - Charter material and related papers - approved text of the Charter by article - Preamble' *United Nations Archive* S 1019/Box 2/File 1. See also 'Report of Rapporteur of Committee 1 to Commission I' (9 June 1945) Doc 885 I/1/34 in *Documents of the United Nations Conference on International Organization San Francisco, 1945 vol VI Commission I General provisions* 391; 'Report of Rapporteur, Subcommittee I/1/ A (Farid Zeineddine, Syria), Section 3, to Committee I/1'(5 June 1945) Doc 785 [I/1/28] in *Ibid* 359 - 360.

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CHAPTER 9

SMUTS AND THE 1946 UNITED NATIONS GENERAL ASSEMBLY

1. Introduction

Smuts' idealistic initiative with regard to the Preamble led to profound consequences for his country.[2365] He introduced the phrase 'fundamental human rights' into the politics of the United Nations. Yet, by the middle of the first year of the United Nations' existence, South Africa was under fire.[2366] India quoted those very words against Smuts at the first meeting of the General Assembly.[2367] Keith Hancock states: 'From that time onwards they became a stick with which to beat South Africa.'[2368]

As Lorna Lloyd rightly notes, from the perspective of the present, 'scarcely an eyebrow would be raised' by the news that in 1946, India complained internationally about South Africa's treatment of people of Indian origin.[2369] It would be regarded as fully in keeping with the ethos of the age.[2370]

[2365] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432. Heyns comments that, immediately after Smuts' contribution to the Preamble to the Charter, the tables started turning on him. CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 346.

[2366] H Tinker *Race, conflict, and the international order: From Empire to United Nations* (1977) 110. Smuts stood accused of undermining his own creation - the international postwar commitment to human rights. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 183.

[2367] This was by no means the first occasion on which Indian South Africans and the government of India had accused Smuts of hypocrisy. With regard to the passage of the Trading and Occupation of Land (Transvaal and Natal) Restriction Act of 1943, the so-called 'Pegging Act,' by which Indians could not buy land in predominantly white areas in Durban, nor whites buy land in predominantly Indian areas without a permit, Smuts wrote to a friend: 'What taunts flung at me, what charges of deserting the idealism which I preach.' Smuts to MC Gillett 15 April 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 426. JH Hofmeyr opposed the provisions of the Act relating to the Transvaal on the grounds that, since they only and applied to Indians, and not Indians and whites alike such as those pertaining to Durban, these provisions were discriminatory. 'Personally I am unable to support this proposal, and . . . therefore . . . I should cease to be a member of the cabinet . . . and I have therefore tendered my resignation to you.' Hofmeyr to Smuts 7 April 1943 in *Ibid* 422.

[2368] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432. See also D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 186 with reference to WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 433. It was doubly ironic that it was Smuts who found himself 'in the dock.' For, as Lloyd points out, in the face of virulent anti-Indian sentiment, Smuts 'had for many years tried to go some way in meeting India's grievances.' Furthermore, Smuts himself had provided India with 'one of the sticks with which to beat him.' It was Smuts who had proposed adding to the Charter a preamble declaring humanity's common 'faith in basic human rights.' In the final version this became a commitment to 'fundamental human rights' and, although the Preamble was not legally binding, Smuts' high-minded initiative was to be quoted against hi m in 1946 and to dog South Africa thereafter. L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 704.

[2369] *Ibid* 703.

[2370] *Ibid*.

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However, from the perspective of 1946, it is remarkable that the United Nations should even have discussed South Africa's treatment of its Indian citizens, let alone have decided by a two-thirds majority that she failed to treat them in conformity with her international obligations and the relevant provisions of the Charter.[2371]

At the founding of the United Nations in 1945, the references to 'human rights and fundamental freedoms' in the Charter were nowhere defined, and generally believed to be exhortatory only.[2372] Thus, when Smuts proposed that the Charter should contain a preamble which reaffirmed a common faith in 'basic human rights,' 'he never dreamed that it would rebound on himself and his country.'[2373] However, the time was not far distant when these words would be flung in his teeth as evidence of his hypocrisy.[2374]

It is beyond cavil that the overwhelming aim in establishing the United Nations was to safeguard international peace and security.[2375] The supreme importance of this goal was manifested in the provision that, only in the case of measures to counter aggression, was the organisation exempt from its general duty not 'to intervene in matter which are essentially within the jurisdiction of any state,' and from its consequential duty not to 'require the Members to submit such matters to settlement under the present Charter.'[2376]

[2371] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 131.

[2372] As Lloyd makes clear, it was probably as realistic to believe that references to human rights in the Charter had outlawed racial discrimination as to believe that references to equity of the sexes had outlawed discrimination agains women. *Ibid* 132.

[2373] Even though Smuts had proposed in his very first draft of a preamble, tabled at the meeting of Commonwealth Prime Ministers in London in 1945, that 'social and legal sanctions' should be established to safeguard human rights (see Chapter 8 (2) above), that proposal did not even survive the conflation of Smuts' and Webster's drafts, and thus did not even see the light of day at San Francisco. Therefore, to the great surprise of virtually all the delegations, the United Nations decided to discuss the treatment of Indians in South Africa. As a result, Great Britain found herself in the unenviable position of watching two Commonwealth countries openly quarrelling, and having to take the lead in opposing the complaint. *Ibid*.

[2374] K Hancock *Smuts and the shift of world power* (1964) 12. See also R Hyam 'South Africa, Cambridge, and Commonwealth history' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 404. Hancock observes that some British statesmen of the 19th century are reputed to have believed that they could be at one and the same time conservative at home and liberal abroad, or *vice versa*. Whether or not those statesmen were right or wrong in their day and generation, by 1945 it seemed clear that it was no longer possible to keep home and foreign policy in separate, logically contradictory compartments. K Hancock *Smuts and the shift of world power* (1964) 15. For Smuts especially, the 19th century maxim, 'liberal abroad, conservative at home' ceased to be serviceable. Under no circumstances would he be able to make a stronger bid for amicable and prudent relations with foreign nations than South Africa's white legislators and voters would sanction. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 455.

[2375] L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 703.

[2376] Article 2(7) of the Charter of the United Nations.

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Thus, to those who were present at the Charter's signing in San Francisco in 1945, it was virtually inconceivable that one of the first matters to be brought to the United Nations would be a complaint by one member about the internal behaviour of another.'[2377]

Article 2(7) - the domestic jurisdiction clause - had been drafted by British Commonwealth leaders with the clear object of preventing their racially discriminatory policies brought before the United Nations.[2378] Moreover, Smuts had taken the precaution of seeking, and receiving, assurances that the United Nations could not discuss the

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[2377] This was certainly not the sort of issue which was envisaged as 'typical or even exceptional fare' for the new international organisation. In 1946, India was still subject to the jurisdiction of the British Crown. It is true that India was a founder-member of the United Nations and no less a member than any other. It was therefore entitled to speak before the organisation. However, 'there was something unexpected' about one of only four non-sovereign members of the United Nations raising its voice in complaint at the very first opportunity, and on a matter of 'doubtful international propriety. It was hardly the done thing.' L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 704.

[2378] *Ibid*. Tothill states that the domestic jurisdiction principle was accorded a relatively unimportant place in the Dumbarton Oaks proposals. However, at San Francisco, as Article 2(7) of the Charter, it became one of the basic principles of the United Nations. Tothill notes that, in view of South Africa's reliance on Article 2(7) - indeed, 'white South Africa was the article's greatest "invoker" in UN history' - it might be thought that, in anticipation of future difficulties, the South African delegation would have been prominent in its formulation. According to Tothill, that would have been the National Party government's approach. However, the record reveals that at San Francisco it was the United States and Australia, not South Africa, who took active steps to minimise the possibility of United Nations interference in a country's domestic affairs. Australia had its 'White Australia' policy in mind. In the case of the United States, there was, as John Foster Dulles put it, the 'negro problem in the South,' and there had been the embarrassing position with regard to Versailles in 1919 and the failure of the United States Senate to ratify the Treaty. Duncan Hall, citing an anonymous member of the South African delegation, claimed in 1971 that Smuts 'took a strong stand' at San Francisco, 'against any weakening of the barrier erected by the Covenant' against intervention in matters of domestic jurisdiction. Smuts gave, asserted Hall, 'a term warning against any tampering with this provision.' However, neither the records of the San Francisco Conference, nor the reports of the South African delegation, are supportive of these claims. The South African delegation submitted but three amendments to the Dumbarton Oaks proposals; strengthening the domestic jurisdiction clause was not among them. Tothill argues that it is obviously significant that in the early years of the controversy, when expounding their interpretation of Article 2(7) at length, South Africa spokesmen would refer to the article's drafting history, citing inter alia Evatt of Australia and Dulles of the United states delegation, but never their own representatives. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 179 - 180.

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treatment of Indians in South Africa.[2379] And, in turn, Smuts had reassured the Union parliament that the United Nations could not interfere in South Africa's internal affairs.[2380]

Great Britain agreed.[2381] When the Foreign Office learned that India contemplated raising the question of the treatment of Indians in South Africa in the General Assembly, the consensus was that, '*[p]rima facie* the treatment in South Africa of Indian nationals is clearly a matter of pure domestic jurisdiction.'[2382] The British Foreign Secretary, Ernest Bevin, confidently assured the Labour Cabinet that it was 'improbable that the Indians will secure a majority vote.'[2383] At the time this was probably a reasonable assumption.

If the United Nations admitted India's complaint it might have 'enormous repercussions' and 'infinite possibilities, as there are racial (not to mention religious and national) minorities all over the place.'[2384] 'Once such interventions began it would be difficult to set limits.'[2385] Moreover, India, of course, also had her own minority

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[2379] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 131.

[2380] *Ibid*. During the parliamentary debate on the ratification of the Charter, Smuts declared that the placing of Article 2(7) among the principles of the new organisation had elevated it to a 'binding rule.' HA Deb vol 55 (7 February 1946) Col 1273 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 184. This was in response to a point raised by Col Stallard, who concluded from the wording of some Charter articles that the colour question and treatment of Indians were going to give South Africa trouble. Malan made the same point. Smuts dismissed their arguments, claiming that Article 2(7) had secured the position. HA Deb vol 55 (7 February 1946) Col 1274 as quoted in *Ibid*. Shearer makes the point that Smuts' use of the legal loophole offered by Article 2(7) when the Indian issue was discussed in the first General Assembly was discreet, for he admitted that it scope was not unlimited and that agreements reached on fundamental human rights could affect it. His assurances to Parliament, however, that Article 2(7) overrode all others, were a striking example of the dichotomy between statements made at home and those believed more appropriate for international consumption. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 323. See also M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 176.

[2381] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 131.

[2382] Draft memorandum by C Heathcote-Smith (second secretary, Foreign Office) 30 April 1946 as quoted in *Ibid* 131 - 132.

[2383] Memorandum by E Bevin 'General Assembly of the United Nations: Indian complaint against South Africa' 17 October 1946 PRO CP(46)373 CAB 129/13 as quoted in *Ibid* 132.

[2384] Minute by Heathcote-Smith 13 April 1946 PRO U 3979/36/70 FO 371/57137 as quoted in *Ibid*.

[2385] Foreign Office to UK Delegation to the General Assembly 5 November 1946 Cypher Telegram 1876 London IOR L/E/9/1403 and PRO DO 35/1293/G715/46 as quoted in *Ibid*.

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problems.[2386] Foreign Office convention was thus that India itself was unlikely to benefit from opening this Pandora's box.[2387]

However in response to South Africa's 1946 Asiatic Land Tenure and Indian Representation Act, India decided to raise, on the full international stage, her long-felt grievances about the treatment of Indians in South Africa.[2388] Lorna Lloyd comments:[2389]

> Perhaps to [India's] own surprise, and certainly to that of many others, the international propriety of her complaint was not denied.[2390] In retrospect it was a huge watershed. For, from this beginning, one can trace the UN's consuming interest in racism and hence what was to become a virtual universal challenge to the legitimacy of the whole South African regime.

The United Nations had certainly gotten off to a very different start than the one Smuts had anticipated.[2391] 'UNO has been a grave disappointment to me,' Smuts wrote to Florence Lamont in 1947.[2392] The primary intention had been to provide for world security against

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[2386] L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 720.

[2387] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 132. As in international relations generally, India exhibited the Janus face on this occasion. There was inherent hypocrisy in India's position. Smuts thought India's complaint surprisingly unjust in view of the discrimination and communal disunity in India. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 237. As Smuts' son noted: 'This charge of discrimination came strangely from an India which had just experienced one of the most save massacres in modern history in Calcutta, where communal rioting had resulted in over 3,500 deaths . . .' JC Smuts *Jan Christian Smuts: A biography* (1952) 404. Moreover, its conflict with South Africa at the 1946 meeting of the General Assembly, occurred 'at a time when Indian nationalists [were] showing as yet no interest at all in black South Africans, but are merely demanding for themselves a share in white privileges.' [2387] K Hancock *Smuts and the shift of world power* (1964) 17.

[2388] L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 705. Smuts attempted to forestall criticism from the Indian community by means of legislation which would provide four members to represent Indians in the House of Assembly, elected on a communal roll (three for Natal and one for Transvaal). In addition, there would be one nominated and one elected member of the senate on behalf of Indians.

[2389] *Ibid*.

[2390] India's complaint was made by one member of the British Commonwealth against another. This was contrary to the imperial doctrine of *inter-se*, which held that inter-imperial disputes were not international matters, and should be settled within the empire in accordance with its procedures. However, in the case of India, a not-yet-dependent Commonwealth territory was acting in blatant violation of the *inter-se* doctrine. *Ibid* 704.

[2391] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 450. Smuts' son records that, although in public Smuts, as was his wont, expressed a fair measure of optimism in regards the work and achievements of the United Nations, he was 'far less enthusiastic on private and such less sanguine of its success.' JC Smuts *Jan Christian Smuts: A biography* (1952) 390.

[2392] Smuts to F Lamont 31 March 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 129.

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war. 'But look at the Security Council and its sorry antics!'[2393] In its security arrangements, the United Nations had been 'moving all wrong from the very start,' rendering the international situation 'more clouded and uncertain than ever before.'[2394] At the United Nations, countries which could nor govern themselves (by which Smuts meant India) sat 'in judgment of others who have done their job fairly well in spite of all sorts of difficulties' (by which, of course, Smuts meant South Africa).[2395]

Smuts doubted that the United Nations was 'fit for [the] task' of dealing with 'these dangerous times.'[2396] Democracy without leadership was 'a sham.'[2397] And, to Smuts, the United Nations seemed to be a 'democracy without leadership, or with a leadership so divided that is it ineffective for all practical purposes.'[2398]

Smuts lamented the General Assembly's 'partisan fatuity.'[2399] He viewed it as not much more than 'a battle ground for the mammoth powers,'[2400] and a 'general Aeropagus, or talking shop, in which the incompetents and misfits rule by counting of heads.'[2401] The United Nations was 'in a bad way,' and 'making heavy weather.'[2402] Smuts encapsulated the geopolitical predicament as follows:[2403]

> With the United States and the Soviet Union facing each other across the world, with Europe still sinking in it leadership derelict, with Britain struck to its foundations, the world is today in a precarious and dangerous position, such as has not existed since the fall of Rome. I cannot see UNO leading us out of this fateful situation.

[2393] *Ibid*. 'Even our old League did better,' Smuts continued. 'It managed world affairs with decency and fair success for ten years and only thereafter was struck by the Hitler blitz, which proved too much for it. *Ibid*

[2394] *Ibid* 130.

[2395] *Ibid*.

[2396] *Ibid*.

[2397] *Ibid*.

[2398] *Ibid*.

[2399] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 147.

[2400] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 450.

[2401] Smuts to F Lamont 31 March 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 130.

[2402] Smuts to MC Gillett 24 September 1946 in *Ibid* 91. 'The temper is bad,' Smuts continue, 'and owing to unmitigated publicity everything is reported and increases the sense of differences and quarrelling. Our international work is thus carried on under difficult and unfavourable conditions.' *Ibid*.

[2403] Smuts to F Lamont 31 March 1947 in *Ibid* 130.

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'On the other hand,' Smuts reflected, 'our paths cross and re-cross, and if we go our own separate ways, there might be worse collisions than in UNO.'[2404]

Smuts had already detected trouble brooding on the horizon at the San Francisco Conference. Smuts complained to his deputy in South Africa, Jan Hofmeyr, that the Conference was about 'a strong humanitarian tendency, finding expression in provisions for equal rights all around and other somewhat embarrassing proposals so far as we are concerned.' 'The conference,' Smuts stated, 'has to be carefully and even anxiously watched.'[2405] The situation seemed to have deteriorated, as a month later he stated to Hofmeyr, rather despondently:[2406]

> Owing to the vague humanitarianism running very strong in the Conference and in Congress and in public opinion generally, we have had much trouble over the subject of trusteeship which involves the colonies and mandates.[2407]

Despite the strongly idealistic tone of Smuts' plenary addresses on human rights at the San Francisco Conference, the Union of South Africa had already chosen a path that would diverge from those nations with whom its destiny in the United Nations should have been joined. Specifically, Smuts threw South Africa's weight behind the Great Powers and the Security Council, at the expense of the lesser nations and the General Assembly.[2408]

However, much of Smuts' apparent pessimism about the United Nations stemmed from his bitter experience at the hands of India, which led the hue and cry against Smuts at the the first meeting of the General Assembly in 1946. Before going himself to the

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[2404] Smuts to D Moore 23 September 1947 in *Ibid* 164. Hancock comments that: In view of the 'rough handling which the General Assembly was giving him, that summing up showed considerable detachment.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 450.

[2405] Smuts to JH Hofmeyr 6 May 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 534

[2406] National Archives and Records Service of South Africa (NARS) BTS 136/1 vol 3 Cypher telegram Smuts to Hofmeyr 2 June 1945 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 177 - 178.

[2407] B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 6. Ben Cockram, who knew Smuts from 1939 to 1948, recalls that, as he flew back from the San Francisco Conference with Smuts over the pine forests, rocks, and lakes of Newfoundland, Smuts remarked: 'I have seen many of the deserts of this world, but here is the abomination of isolation.' Cockram believes that, rather than commenting on the landscape, Smuts may have had 'some premonition at the time of the frustration which was to come so soon . . . to his highest hopes.' *Ibid*.

[2408] JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 321.

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centre of the storm'[2409] at the 1946 General Assembly, Smuts traveled to Paris to attend the second Paris Peace Conference (1946),[2410] and to London. As is clear from his letters to Hofmeyr from London, he realistically assessed the stormy passage that awaited him in New York:[2411]

> [T]here is no doubt that we are going to strike heavy weather . . . at UNO. There is growing widespread opinion adverse to us . . . As Nicholls puts it, 'South Africa will be on the spot at New York' . . . I sense a worsening atmosphere in many directions. Mostly, of course, the trouble is due to the South African attitude on Native political rights and the difficult structure of our social racial system. Our difficulties in this 'one world' are increasing and I don't see clearly what can be done about it.

Some months earlier, Smuts also stated:[2412]

> I have my serious difficulties with Indian and world opinion . . . [but] [i]n the last resort I take sides with the European and what he stands for on this continent. India will not bring healing to Africa and has not done so in the hundreds of years of her intrusion into or contact with Africa. The European with all his faults carries a message for Africa which India does not.[2413]

From New York, Smuts wrote to Margaret Gillett on 27 October 1946:[2414]

[2409] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467.

[2410] In mid-August 1946, Smuts addressed the Peace Conference at Paris in plenary session, 25 years after the first. He was the only statesman among the 21 delegates who 'had sat at the Versailles table a quarter of a century before.' JC Smuts *Jan Christian Smuts: A biography* (1952) 403 - 404. Smuts used his position as the only surviving member of the 1919 peace negotiations to hold personal talks with leading representatives from different countries in an attempt to avoid any suggestion that a third world war was already in the offing. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 236. 'He conveys the impression of a philosopher-king,' wrote Harold Nicolson, very old, very wise.' As quoted in A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 143

[2411] Smuts to JH Hofmeyr 23 September 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 88; WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 179. See also K Hancock *Smuts and the shift of world power* (1964) 18. Smuts replied, with some irascibility, to a letter from Hofmeyr, insisting that, although some liberalisation of native policy must take place at a modest rate, it could only occur with the consent of the white population. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 236.

[2412] Smuts to MC Gillett 9 March 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 47. 'I have had a difficult problem with UNO over South West Africa,' Smuts stated in January 1946. Smuts to MC Gillett 126 January 1946 in *Ibid* 38. On 3 March 1946, Smuts wrote: 'The inconvenient Indian nuisance has once more shown its ugly head here; and the problem of South West Africa is coming up at the next UNO meeting in New York. Both of them will put us out of gear with the general trend of world opinion, and make poor South Africa once more appear more reactionary than she really is. It is all a great pity, but I suppose part of that impish element in history which makes fools of us when we think ourselves especially wise or right.' Smuts to MC Gillett 3 March 1946 in *Ibid* 45.

[2413] This statement of course calls to mind what Smuts perceived to be South Africa's civilising mission on the African continent.

[2414] Smuts to MC Gillett 27 October 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 101.

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> [I]t is evident that I am going to have much trouble over these items [Indians and South West Africa] which concern South Africa. The going will be difficult. The conference as a whole, while not disliking South Africa, dislikes its colour bars and racial outlook.

With perhaps more candour than he would exhibit publicly, Smuts explained his point of view:[2415]

> South Africa is a little epic of European civilization on a dark continent. India is threatening this noble experiment with her vast millions who have frustrated themselves and are now frustrating us. All along the east coast of Africa from Mombassa to Durban and ultimately Cape Town they are invading, infiltrating, penetrating in all sorts of devious ways to reverse the role which we have thought our destiny.[2416]

'[A]lthough I love and respect the whole human family, irrespective of colour or race,' Smuts declared, he prefaced that statement with, 'I frankly am a Westerner.'[2417] As such, '[w]e stand for something which will go and be lost to the world, if India gets control of Eastern South Africa.'[2418] Referring to the first meeting of the General Assembly, Smuts said: 'I have a most difficult and invidious an distasteful job, but I must do it . . .'[2419]

According to Keith Hancock, Smuts also had 'sufficient poise' to see India's point of view:[2420]

> I am suspected of being a hypocrite because I can be quoted on both sides. The Preamble of the Charter is my own work, and I also mean to protect the European position in a world which is tending the other way.[2421]

It was not only to India, but also to many South Africans, that Smuts' attitudes appeared contradictory. In January 1947, well aware of the irony of his position and of what would be said of him, Smuts wrote:[2422]

[2415] *Ibid*. See also M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 182.

[2416] Appeals from white settlers in Kenya to help control Indian immigration only reinforced Smuts' belief that Indian political leaders were bringing pressure to bear in every possible way to support Indian expansion in East Africa. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 233.

[2417] Smuts to MC Gillett 27 October 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 101.

[2418] *Ibid*.

[2419] *Ibid* 102.

[2420] As quoted in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 450.

[2421] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 45 - 46

[2422] Smuts to MC Gillett 14 January 1947 in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 117.

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> The opposition naturally rejoices and puts this all to my account, and to the liberalism (!) with which I had led the world astray. Here is the author of the great preamble of the Charter, exposed as a hypocrite and a double-faced time server!

2. The incorporation of South West Africa into the Union of South Africa

Smuts personally attended the first meeting of the General Assembly of the United Nations in 1946, to request, in reliance on his country's favourable war-time reputation, the incorporation of South West Africa into the Union.[2423] Since 1919, South Africa had administered South West Africa as class 'C' Mandate. Under international law, this designation meant, in effect, that South West Africa was considered an 'integral part' of South Africa, but South Africa did not possess sovereignty over the territory.[2424]

At San Francisco, Smuts, on behalf of the Union of South Africa, had rejected the invitation to the mandatory powers to bring their mandates into the proposed trusteeship system of the United Nations.[2425] However, Smuts went even further. In early May of 1945, the South African delegation at the San Francisco Conference, in a bold move, attempted to circulate as a Conference document its proposals regarding the mandated territory of South West Africa.[2426] In this document, South Africa proposed that its mandate over South West Africa be terminated, and that the territory be incorporated as part of the

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[2423] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 346.

[2424] In 1945, Smuts still hoped to fulfil South Africa's geopolitical destiny by expanding northward and creating a Greater South Africa. It was better from his perspective to have a continent under South Africa's guidance within the British Commonwealth than either of the alternatives: (i) Nazi-dominated Euroafrika of the kind being pedalled in the war years by German colonial enthusiasts; or (ii) anarchy and fragmentation that Smuts anticipated with any serious concession to native rule. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 157.

[2425] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467. Bentwich notes that the destiny of the former League Mandates was not certain. An unfortunate vagueness had been left in the Charter, and no definite obligation was imposed. The transfer from the old supervision (mandate) to the new (trusteeship), and any amendment to the terms of the trust, were only to be made by agreement of the powers directly concerned, including the existing mandatory. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 75.

[2426] A Hiss to T Hewitson 5 May 1945 in 'UNCIO - Representatives and Observers - Credentials - Union of South Africa' in *United Nations archives* File marked '1 April 1945/29 July 1945.' The document was distributed among the various delegations and classified restricted. A Hiss to T Hewitson 5 May 1945 in 'UNCIO - Representatives and Observers - Credentials - Union of South Africa' in *United Nations archives* File marked '1 April 1945/29 July 1945.'

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Union of South Africa.[2427] Smuts apparently had the support of American Secretary of State, Stettinius, and Foreign Secretary Eden, the respective leaders of their delegations at San Francisco.[2428]

The Executive Secretary of the Conference issued a stop order on distribution as soon as the proposed 'Conference document' came to his attention.[2429] He remarked that 'the entire content of the document' was a 'discussion of the status of South West Africa,' ending in the recommendation that the territory should he incorporated as part of the Union of South Africa.[2430] The Executive Secretary 'seriously questioned whether a paper of this character, advocating a specific change in the status of a territory, should be

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[2427] 'Proposals submitted by the delegation of the Union of South Africa with regard to the mandated territory of South West Africa' in 'UNCIO - Representatives and Observers - Credentials - Union of South Africa' in *United Nations archives* File marked '1 April 1945/29 July 1945.' The Union's reasons for seeking incorporation included:

1. For 25 years, the Union had governed and administered the territory as an integral part of its territory, 'and has promoted to the utmost the material and moral well-being and the social progress of the inhabitants.' South Africa applied many of its law in South West Africa, and had 'faithfully performed its obligations under the Mandate.'
2. South West Arica was in a 'unique position' when compared with other territories under the same form of Mandate.
3. South West Africa was geographically and strategically a part of South Africa. Moreover, during the First World War, 'a rebellion in the Union was fermented from it, and an attack launched against the Union.'
4. South West Africa was 'in large measure economically dependant' upon South Africa, 'whose railways serve it, and from which it draws the great bulk of its supplies.'
5. The dependant native peoples of South West Africa sprang 'from the same ethnological stem as the great mass of the peoples of the Union.'
6. Two-thirds of the European population of South West Africa were of Union origin.'
7. South West Africa had its own legislative assembly, granted to it by the South African parliament, and this assembly had submitted a request for incorporation of the territory as part of the Union.
8. South Africa had introduced as 'progressive policy of Native Administration,' including a system of local government through Native Councils that gave 'the Natives as voice in the management of their own affairs,' and under South Africa administration, Native Reserves had 'reached a high state of economic development.'
9. 'In view of the contiguity and similarity in composition of the native peoples in South West Africa,' the native policy followed in South West Africa must always be aligned with that of South Africa, three-fifths of the population of which was native.
10. There was 'no prospect of the territory ever existing as a separate state,' and, therefore, 'the ultimate objective of the Mandatory principle [was] impossible of achievement.'

South Africa anticipated that 'territorial questions' would be reserved for disposition at 'a later Peace Conference,' where South Africa would raise the matter, 'it is here only mentioned for the information of the Conference in connection with the Mandates question.' 'Proposals submitted by the delegation of the Union of South Africa with regard to the mandated territory of South West Africa' in 'UNCIO - Representatives and Observers - Credentials - Union of South Africa' in *United Nations archives* File marked '1 April 1945/29 July 1945.'

[2428] The *Friedmann Papers*; see note 218 above.

[2429] Memorandum from Executive Secretary to Secretary General 5 May 1945 in 'UNCIO - Papers of the Secretary-General' in *United Nations archives* S 1020/Box 1/File 3.

[2430] *Ibid*.

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circulated as a Conference document,' notwithstanding the statement in the last paragraph that it was for information only.[2431]

Moreover, in laying the groundwork for Smuts' request, later that year, for the incorporation of South West Africa into the Union of South Africa, Heaton Nicholls, reminded the General Assembly in January 1946 that Smuts was the original author of the mandate system under the League of Nations.[2432] The mandate system set out as its explicit objective the promotion of the material and moral well-being, and the social progress, of the inhabitants of all trust territories. It also laid the obligation upon the mandatory power to inform the world of its success or failure in administration.[2433] This ideal, Nicholls stated, took the place of the 'old age-long conception' that conquered territories should be annexed by the victors.[2434]

Nicholls also felt himself compelled to remind the Assembly that Smuts was the 'original author of the Preamble to the Charter of the United Nations, the spirit of which is guiding our deliberations.'[2435]

While in London, Smuts took precautionary steps to shore up the support of the United Kingdom and the senior members of the Commonwealth, not merely for fending off the anticipated Indian attack, but also for winning international endorsement of his proposal to incorporate South West Africa into the Union.[2436]

[2431] *Ibid*. On 12 May 1945, Cabot Coville prepared a 'Note for file,' that read: 'On May 6 I communicated with Mr. Jordan of the South African Delegation and told him that the distribution by the Secretariat of the document . . . would raise a number of questions and we would therefore prefer to have the request for distribution withdrawn . . . Today he telephoned and told me that the South African delegation will look after distribution itself.' Ibid.

[2432] 'Twelfth plenary meeting' (17 January 1946) in *United Nations official records of the first part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 10 January - 14 February 1946* 180.

[2433] *Ibid*.

[2434] *Ibid*.

[2435] *Ibid*.

[2436] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467. On 15 October 1947, Smuts wrote to Hofmeyr: 'Tomorrow and the following days in London, I shall take up the South African questions awaiting us in UNO . . . Prospects look pretty bad, but I shall do what I can to reach solutions, or a decent way of postponing where solutions are not possible.' Smuts to JH Hofmeyr 15 October 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 99. And, on 17 October 1946, Smuts agains wrote to Hofmeyr: 'This morning I had a talk with Attlee over South West Africa - quite satisfactory so far as the United Kingdom is concerned . . . We shall put the few of the South West Africa inhabitant before UNO.' Smuts to JH Hofmeyr 17 October 1946 in *Ibid* 100. Mazola comments that British backing was not longer sufficient: Whitehall was not in the driver's seat, as it had been at the establishment of the League, and could not control the debate. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 157.

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Therefore, it is clear that, short of unilaterally annexing South West Africa during the war, Smuts left no stone unturned to secure the incorporation of the territory into the Union of South Africa with the recognition of the international community.

Keith Hancock comments that, '[n]ot a dog would have barked during the Second World War if [Smuts] had simply annexed South West Africa . . .'[2437] Astonishingly, in fact, it would seem that Churchill pressed Smuts, not once, but twice, to annex South West Africa before the end of the war.[2438]

Hancock believes that Smuts' 'old-fashioned respect for the legal fabric of the society of nations restrained him.'[2439] And, in the end, Smuts was 'made to suffer for his self-restraint.'[2440]

Among the reasons that Smuts advanced for the incorporation of South West Africa into the Union at the first meeting of the General Assembly in 1946, were geographical contiguity, ethnological kinship, and mutual economic advantage.[2441] However, with commensurate emphasis, the Union Government also insisted that incorporation was the stated desire of the population of the territory. The European population had demanded incorporation by a unanimous vote of the Legislative Assembly, and the non-European

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[2437] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467.

[2438] The origin of this information is the *Friedmann Papers*. When Smuts returned from one of the War Cabinet meetings at No 10 Downing Street in 1943, he mentioned to Friedmann that Churchill had urged him as a matter of urgency to annex South West Africa formally and to do so at the next session of the Union Parliament. Churchill stated that South Africa would have the full support of the British Cabinet. The time to do so was now as the tide of the war was turning against Germany. Also, Churchill believed Smuts would enjoy the support of all the Allies, particularly as South Africa's stature stood high among them.Churchill foresaw endless trouble of an international nature if he did not act before a peace treaty with Germany was signed. Friedmann raised the issue of the possible annexation of South West Africa with Smuts again during the weeks immediately preceding the Normandy invasion. Smuts said that Churchill once more urged him to annex South West Africa. Because of his substantial majority in Parliament following the 1943 elections, according to Churchill, a quick and easy passage through the House of the necessary legislation would be assured. Churchill also pointed out that Russia had unilaterally annexed Estonia, Latvia, and Lithuania. However, Smuts stated that he preferred to wait until the war is over, and he could formally request the consent of the Allies to annex South West Africa. Smuts believed that such consent would only be a formality. The *Friedmann Papers*; see note 218 above.

[2439] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467. Lentin remarks that Smuts' 'presence was a mark of his respect, as a jurist, constitutionalist and internationalist, for the principles of international law.' A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 147. Friedman states that Smuts was 'steeped in constitutional proprieties.' The *Friedmann Papers*; see note 218 above.

[2440] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467. Friedman also comments that, in disregarding Churchill's advice, Smuts caused South Africa to face a progressively intense onslaught from all the other states of the world community - democratic, dictatorial, communist, and oligarchic alike - for more than 33 years. The *Friedmann Papers*; see note 218 above.

[2441] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 467.

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population had approved it by a vote of 208 850 to 33 520.[2442] The British Government declared itself satisfied with the procedure followed by the Administrator of South West Africa in consulting the non-European population on this issue.[2443]

However, the Indian Government made plain that this was not also its conviction, and it took the lead in opposing South Africa's claim.[2444] India questioned the result of a plebiscite taken by the Government to test African opinion in South West Africa,[2445] on the basis that the method of consultation through the medium of chiefs denied the people freedom of expression.[2446] India submitted a counter-claim that the territory, similarly to other mandated territories, had to be recast as a trust territory.[2447] On 14 December 1946, the General Assembly, by 37 votes to none, with nine abstentions, adopted a compromise resolution. It rejected incorporation, but did not insist on trusteeship.[2448]

Mark Mazower comments that Smuts' defeat over South West Africa was an important marker of changing climate of international opinion.[2449] The first session of the General Assembly of the United Nations in 1946 proved every bit as trying as Smuts had feared.[2450]

[2442] *Ibid* 467 - 468.

[2443] *Ibid* 468.

[2444] *Ibid*. Smuts notes in a letter to his wife on 27 October 1946 that, 'Vishinski the Russian at once made an objection to our claim to South West Africa and the Indian question as well as South West Africa have been referred to a steering committee in which strong opposition to South Africa has developed.' Smuts to SM Smuts 27 October 1946 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 105.

[2445] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 238.

[2446] *Ibid*.

[2447] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 468. 'South Arica 'declin[ed] under pressure, to surrender her old "C" class mandate.' JC Smuts *Jan Christian Smuts: A biography* (1952) 389.

[2448] Sixty-fourth Plenary Meeting, 14 December 1946; WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 468. Pending a final decision on the question of status, the General Assembly requested the Union Government to administer South West Africa 'in the spirit of the principles laid down in the mandate.' *Ibid*.

[2449] Smuts' 'annexationism was badly out of kilter with the times.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 157.

[2450] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 237.

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3. The quarrel with India

3.1 The arguments

By 1946, India was on the cusp of independence and of imagining a post-colonial future.[2451] As a result, the United Nations became an institution closely intertwined with India's hopes for itself and for the future of humanity.[2452] For Jawaharlal Nehru, the United Nations represented a world political development of supreme importance.[2453] On 22 June 1946, the interim Government of India requested that the Secretary-General include in the agenda of the second part of the first session of the General Assembly, a formal complaint

[2451] M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 312.

[2452] *Ibid*.

[2453] Mazower states that, in 1946, even before India itself gained independence, Jawaharlal Nehru and his interim Government seized on this and turned it into a cause célèbre, bypassing Whitehall and publicising their case in the General Assembly. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 59. Hancock writes that Smuts could not offer the Indians justice. He offered them communal representation, which they rejected as a niggardly and humiliating half loaf. A independent India emerged, she was no longer seeking an accommodation with South Africa. She was standing on the ground of principle, and her aim was victory. K Hancock *Smuts and the shift of world power* (1964) 18. In JC Smuts' opinion, India believed that she had a mission to consolidate the overwhelming non-White mass of the United Nations. It was partly animus and partly ambition.' JC Smuts *Jan Christian Smuts: A biography* (1952) 404.

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against the Government of the Union of South Africa, alleging mistreatment of approximately 250 000 persons of Indian descent in South Africa.[2454]

South Africa's racial policies had at last brought it in open conflict with an outside power; and that outside power was a fellow member of the Commonwealth no less.[2455] The situation was a particularly unhappy one for Smuts. He - the staunch champion of the Commonwealth - was now responsible for the first serious rift in the structure which he had always defended and lauded, on holistic grounds, as a force of peace and stability.[2456]

The dispute between India and South Africa was the first to be taken to the General Assembly, and it resulted in the United Nations' first condemnation of South Africa, and, for

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[2454] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 52 - 53. This thesis will focus on the arguments preferred by both sides. The various procedural steps in the first General Assembly dealing with the Indian complaint is beyond the scope of this thesis. Thus, by way of summary only, the procedural history of the General Assembly's treatment of this question is as follows: The General Assembly, at its 46th plenary meeting, held on 31 October 1946, referred to the Joint First and Sixth Committee for consideration the question of the treatment of Indians in the Union of South Africa. On 20 November and 23 November, respectively, the representatives of India and of the Union of South Africa submitted written proposals concerning this question. Each of the representatives of India and of the Union of South Africa submitted resolutions. In the course of discussion, the representatives of the United Kingdom, the United States, and Sweden presented a combined amendment to the proposed Indian resolution. The representatives of France and Mexico also submitted a joint amendment to the Indian resolution. Before the Committee proceeded to a vote, the representative of South Africa announced that he had withdrawn the union of South Africa's resolution in favour of the amendment submitted by the United Kingdom, the United States, and Sweden. The representative of India likewise announced that the Indian resolution had been withdrawn in favour of the amendment presented by France and Mexico. 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946 1006,* 1007. For a detailed and useful account of the progression of India's complaint against South Africa at the 1946 General Assembly, see L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 131 - 153. See also H Lauterpacht *International law and human rights* (1950) 192 - 199; JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 24; PG Lauren *The evolution of international human rights: Visions seen* (2003) 205; J Morsink T*he Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 26; J Kunz 'The United Nations Declaration of Human Rights' (1949) 43 *American Journal of International Law* 318; RB Ballinger 'UN action on human rights in South Africa' in E Luard (ed) *The international protection of human rights* (1967) 251.

[2455] Hancock notes that the dramatic encounter at the General Assembly in 1946 was the culmination of the 'almost truceless, seemingly endless battle that South Africa and India had been fighting with each other' throughout the first half of the 20th century. K Hancock *Smuts and the shift of world power* (1964) 15. At a press conference in 1919, shortly before his return to South Africa from the Paris Peace Conference, Smuts had approved of the declared policy whereby India in the fulness of time would take her place as an equal member of the Commonwealth. In effect, explains Keith Hancock, Smuts was asserting that the Commonwealth was destined to become something greater than a white man's club. Throughout the next 25 years, he restated this conviction many times in public. He also reiterated it many times in his correspondence to friends, including persons of responsibility, such as Gandhi and LS Amery, the British secretary for India. *Ibid* 13.

[2456] B Friedman *Smuts: A reappraisal* (1976) 175.

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that matter, of any state for human rights violations.[2457] The question was submitted under Articles 10 and 14 of the Charter, as a situation likely to impair friendly relations between India and South Africa. The application and a supporting memorandum[2458] set forth that, amongst the disabilities suffered by the Indians in South Africa:[2459]

> [A]re lack of parliamentary and municipal franchise, restrictions on rights of ownership and occupation of property, restrictions on trading, employment in public services, and travel, and lack of educational facilities[, culminating in 1946 in the enactment of legislation] designed to segregate Indians into particular areas, for residence and for ownership and occupation of fixed property.[2460]

Reaction to these measures had been so serious, the Indian complaint continued, that the Government of India had found it necessary to terminate the trade agreement between the two countries and to recall its High Commissioner.[2461]

The General Committee of the General Assembly referred the disputed issues in the first instance to the First (political) and Sixth (legal) Committees, meeting in joint session.[2462] In its contentions advanced before the General Assembly and its Joint Committees, representatives of India claimed that the Government of India did not deny that the Indians of South Africa were nationals of the Union of South Africa, 'but it considered that it had moral and political obligations towards them.'[2463] 'The South African

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[2457] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 131.

[2458] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 53 - 81. Memoranda by the Government of the Union of South Africa (Docs A/167 and A/167/Add 1) are reproduced in *Ibid* 81 - 131. The memorandum of India contained a historical survey of events from the 1850s to the adoption of the Asiatic Land Tenure and Indian Representation Act 28 of 1946. B Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 24. Although the Act provided for a qualified franchise on a separate voters' roll, allowing Indians to be represented in Parliament, the Act placed restrictions on their residential and land purchase rights. *Ibid* 24 n 1.

[2459] As quoted in HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 45.

[2460] India fulminated against the 1946 legislation as a segregationist measure. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 468. Mazower, describes this legislation as an 'astonishingly ill-timed new piece of South African anti-Indian legislation.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 170.

[2461] HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 45; B Schwarz *Memories of empire volume 1: The white man's world* (2011) 301.

[2462] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

[2463] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 2,9.

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Government had always accepted this policy. Until the present debate, it had never treated the Indian problem in South Africa as a domestic problem.'[2464]

In 1927, a round table conference at Cape Town between representatives of the Governments of India and South Africa had resulted in a 'solemn agreement' on the upliftment of Indian migrants in the Union and their possible return home, which had constituted a treaty.[2465] The Cape Town Agreement had been 'solemnly ratified by the legislatures of both countries' and had been reaffirmed in 1932. The South African Government had unilaterally repudiated the Cape Town Agreement by its general discriminatory policy and by enactment of the Asiatic Land Tenure and Indian Representation Act of 1946.[2466]

More significantly, the South African Government's discriminatory treatment of Indians on grounds of their race constituted a denial of human rights and fundamental

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[2464] *Ibid* 9.

[2465] As quoted in HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 45 - 46. See also JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 24.

[2466] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 10, 2, 52 - 53 For the text of the Cape Town Agreement, see A/C 1 & 6/SR 66 - 67, 68 and further, and also A/C1/SR 108 (14 November 1947) 6. In the next meeting, Mrs Pandit stated that Jesus Christ would have been a prohibited immigrant under South African law, and if the country had belonged to anyone, it was the 'barbaric indigenous population' from whom it had been seized. Cited in UK delegation to Foreign Office (26 November 1946) Telegram 2002 PRO DO 35/1293/G715/46 as quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 141. In introducing the Asiatic Land Tenure and Indian Representation Bill in Parliament, Smuts said in the same breath: 'We do stand for human rights. we are determined to discharge our human duties in a fair way to all sections of our community and to Indians also, but we are determined that we must the European orientation of our society and not switch to Asiatic culture . . .' He was 'the last person,' Smuts said, 'to minimise the importance of this Bill from the international point of view . . .' This bill was 'essentially an internal measure,' Smuts claimed, 'to provide social peace ad the good ordering of our society.' it was untrue that the bill was 'an insult or challenge to Asia . . .' They were 'not breaking new ground' with this bill, Smuts said. They were following 'well known South African models.' He stated: 'We are following principles and practices which have been adopted in the past . . . an which we look upon as essential to the structure of our complex society in South Africa.' As quoted in JC Smuts *Jan Christian Smuts: A biography* (1952) 399. See also S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 47.

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freedoms as was a violation of the fundamental purposes and principles of the United Nations Charter.[2467]

The person Nehru chose to lead India's United Nations delegation was his sister, Vijaya Lakshmi Pandit.[2468] Lorna Lloyd notes that it was an inspired decision.[2469] She was the first female minister in India, and was familiar with the United Nations.[2470] She had been at the founding San Francisco Conference where she denounced the British-selected Indian delegation as unrepresentative, and demanded justice for countries, 'which like India, are under the heel of alien militarists.'[2471] Pandit would go on to become the first female president of the United Nations General Assembly in 1953.[2472]

[2467] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 132, 2, 10. See also H Lauterpacht *International law and human rights* (1950) 193; R Schifter 'Human rights and the United Nations: The South African precedent' (1992 - 1993) 8 *American University Journal of International Law and Policy* 363; Report of the Indian Delegation 27 February 1947 NAI 2(19)-UNOI/47 1947 and IOR EXT 8593 1947 180/7/L/E/9/1392 as quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 140. The Indian delegation submitted a draft resolution that called upon the Union government to: '[R]evise their general policy and their legislative and administrative measures affecting Asiatics and South Africa, so as to bring them into conformity with the principles and purposes of the Charter.' In response, the South African delegation submitted a counter-resolution, proposing that an advisory opinion be sought from the International Court of Justice, with regard to whether the matter in dispute belonged essentially within South Africa's domestic jurisdiction, pursuant to Article 2(7) of the Charter. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 468 - 469. See also JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 24.

[2468] In CE Burckel (ed) *Who's who in the United Nations: The authoritative, illustrated, biographical key of persons associated with the United Nations* (1951), Mrs Pandit is listed as 'Madame Vijayalakshima Pandit.' See entry under 'Papi.'

[2469] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 135. India 'lobbied hard,' and in Mrs Pandit had a leader who was eloquent, striking, and dignified, and who possessed the ability, not only to speak to the heart, but also to do so with maximum effect, even to the extent of wiping a tear from her eye. L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 724. She was a formidable adversary. In six lengthy speeches, several of them lasting two or three hours, she kept up a sustained and relentless attack, not only in the General Assembly, but also in the Committees to which the matter had been referred. Mrs Pandit not only captured the sympathy of the General Assembly, but swept it along in a wave of indignations against South Africa. B Friedman *Smuts: A reappraisal* (1976) 176. Schwarz characterises the attack that Mrs Pandit unleashed on Smuts and on South Africa as 'ferocious.' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 301.

[2470] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 135.

[2471] As quoted in *Ibid*.

[2472] M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 312.

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Gandhi himself gave Mrs Pandit clear instructions.[2473] More than thirty years earlier, the Mahatma's own struggle for Indian rights in South Africa had brought him into close contact with Smuts.[2474] From that experience emerged a 'strange' friendship,[2475] which Gandhi was not prepared to sacrifice 'for the sake of getting a majority vote.'[2476] He entreated Mrs. Pandit to remember that Smuts was 'a man of God,' and that she should shake his hand and ask his blessing for her cause.[2477]

As expounded upon below, essentially, India held that the question was moral-political, whereas South Africa argued that it was legal.

[2473] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 136.

[2474] In June 1914, Smuts and Gandhi ended their seven-year quarrel in a spirit of accommodation. His mission to South Africa complete, Gandhi returned to India. L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 706.

[2475] After receiving the news of Gandhi's hunger strike in Poona in February 1943, Smuts wrote to Margaret Gillett: '[T]here is always something peculiarly disagreeable in the Gandhi technique, much as I honour and respect him for great qualities. I suppose the Indian and the European mind work too far apart really to understand each other.' Smuts to MC Gillett 22 February 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 415. In March 1946 Smuts had received a telegram from India furiously denouncing his government's land and franchise proposals, but nevertheless concluding: 'Your and South Africa's sincere friend, Gandhi.' Telegram from MK Gandhi to Smuts 18 March 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 50. The telegram opens: 'Your Asiatic policy requires overhauling. It ill becomes you . . .' *Ibid*. Smuts answered with a telegram on 21 March 1946 in which he stated: 'I much appreciate your interest and your kind message of friendship which is warmly reciprocated.' After explaining how the provisions of the Asiatic Land Tenure and Indian Representation Act were advantageous to the Indian community in South Africa, Smuts stated: 'As such I commend it to you who know how great are the difficulties in maintaining harmony among South Africans of all races.' Telegram from Smuts to MK Gandhi 21 March 1946 in *Ibid* 50 - 51. No matter what happened,' comments Hancock, 'his strange friendship with Gandhi remained indestructible.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 472. In the wake of Gandhi's assassination on 30 January 1948, Smuts wrote to Leo Amery: 'Gandhi has played a very large part in the world and produced an effect on opinion which has in some respects surpassed that of any other contemporary of ours. And he *succeeded*. And his success was due not only to his personality but to strange methods, never resorted to by other leaders. Altogether he was a strange human phenomenon.' Smuts to LS Amery 21 March 1946 in *Ibid* 180 (Smuts' emphasis). Smuts also referred to Gandhi as an enigmatic figure, and a prince of men. As quoted in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 472.

[2476] *Ibid* as quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 136. Before Mrs Pandit left India, Gandhi had said to her: 'I don't mind whether you come back having won your case or having suffered defeat. but you just come back as a friend of Field Marshal Smuts.' JC Smuts *Jan Christian Smuts: A biography* (1952) 406.

[2477] VL Pandit *The scope of happiness: A personal memoir* (1979) 205, 206, 288 - 289 as referenced in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 136. Hancock writes that, at the General Assembly in November 1946, a greeting came to Smuts from across the deepening chasm between their two countries. Its bearer was his principal assailant, Mrs. Pandit. She explained Smuts that Gandhi's parting words to her had been 'that I should shake your hand and ask your blessing for my cause.' As quoted in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 472.

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Mrs Pandit 'spurned legal arguments' and demanded a verdict on a proven violation of the Charter.[2478] In the course of her remarks, she declared:[2479]

> For us this is not the mere assertion of rights and privileges. We look upon it primarily as a challenge to our dignity and self-respect. India has resisted every attempt to divert the debate to a consideration of the legal aspects of the issue . . . What the world needs is not mere charters, not more committee to define and courts of justice to interpret, but a more willing implementation of the Charter by all governments.

With reference to South Africa's claim that the question, pursuant to Article 2(7) of the Charter, was essentially a matter of domestic jurisdiction, Mrs Pandit declared that it was too late to argue that fundamental violations of the principles of the Charter are matters of domestic jurisdiction of member States.[2480] 'If this were the case,' Mrs Pandit continued, 'the Charter would be a dead letter, and our professions about a free world, free from inequalities of race, free from want, and free from fear, an empty mockery.[2481] South Africa stood condemned by her own admissions of 'gross violation of the Charter.'[2482] The question was international not domestic:[2483]

> Over many years my Government, irrespective of it constitution and character, has appealed, complained, protested, and sough compromises and agreements, and finally has been forced into retaliation and to bring this matter before the bar of world opinion.

[2478] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 147. On the evening of the vote in the General Assembly, 7 December 1946, writes Lloyd, 'to the rostrum came Mrs Pandit, elegant, commanding, and above all, eloquent.' As reported in the *New York Post* on 10 December: Her 'clear, high voice dominated the proceedings and for the time being place in shadow the gaunt, white-bearded figure of the South African leader, General Smuts.' As quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 146.

[2479] As quoted in M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 323.

[2480] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1016.

[2481] *Ibid*.

[2482] '*Ibid*. Hancock writes that between 21 November and 8 December 1946 Smuts listened 'patiently and courteously' to six successive speeches by Mrs. Pandit, the leader of the Indian delegation. Throughout, Mrs. Pandit expressed 'elevated sentiments' that 'exposed South Africa's political and moral misdeeds.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

[2483] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1016.

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The Union Government was a signatory to the Charter, 'and the head of that Government the reputed author of the Preamble.' Thus, both Smuts and his Government stood 'deeply committed to honour the obligations that both the spirit and the letter of the Charter impose.'[2484] Mrs Pandit quoted the very words Smuts was responsible for introducing into the Charter - 'human rights' - against him in reproach for the South African government's policies with respect to the treatment of Indians in South Africa.[2485]

However, she would deliberately refrain, Mrs Pandit continued, from entering into 'legal and meticulous arguments.' The essence of the South African case was an 'assertion that segregation and discrimination are essential to the maintenance of western standards of life.'[2486] The question 'was therefore a political one and not a legal one.'[2487] The issue, in Pandit's opinion, 'was whether western civilisation was to be based on the theory of racial supremacy.'[2488] The 'forces generated by the maladjustment of human relations are perhaps equally powerful' and as dangerous to the future of the world as the atom bomb.[2489] Mrs Pandit warned the General Assembly:[2490]

> The mind of men is more powerful than matter. The forces and feelings which move the minds of men are often more far-reaching in their effects than material forces. We must remember that . . . the minds of millions of people in India and in other parts of Asia and in Africa have bee moved to intense indignation at all forms of racial discrimination which stand focused on the problem of South Africa.

[2484] *Ibid* 1017.

[2485] Fifty-second Plenary Meeting, 8 December 1946.

[2486] Doc A/PV of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* (7 December 1946) 50. In the view of the South African Government, the 'very existence' of Indians in South Africa was 'a threat to western civilization.' And, if that was true, then 'the existence of Indians, other Asiatics, and all non-Europeans' was a threat to western civilization. However, western civilization was not confined to any continent, and, therefore, on the theory of the South African Government, the defence of western civilisation essentially demanded segregation as part of the world social system. In fact, Mrs Pandit declared, the Union of South Africa has invited the General Assembly to legalise 'the ghetto . . . as part of the world's stable organization.' 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1017.

[2487] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 3.

[2488] *Ibid* 24.

[2489] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1018 - 1019.

[2490] *Ibid* 1019.

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'This is a test case,' Mrs Pandit declared: 'Shall we fail that test? I say, No. I ask you to say, No, by your vote.'[2491] The problem was, above all, a great moral problem.[2492] Mrs Pandit boldly concluded: 'Mine is an appeal to conscience, to the conscience of the world, which this Assembly is.'[2493]

The 'restricted and narrow issue' of the competence of the United Nations should not be referred to the International Court of Justice.[2494] Citing the opinion of the Permanent Court of International Justice in the Tunis-Morocco Case that, whether or not a matter was solely within the domestic jurisdiction of a state, was a relative question, another representative of India concluded that the International Court of Justice was 'not qualified to express an opinion on this question.'[2495] It 'would be great mistake to permit a Court as eminent as the International Court of Justice to become involved in political issues.'[2496]

The Government of India therefore asked the General Assembly to declare that the treatment of the Indian population of South Africa was a violation of the Charter an that the South African Government should revise its general policy and legislation affecting Asiatics in South Africa so as to bring them into conformity with the principles and purposes of the Charter.[2497]

[2491] *Ibid*.

[2492] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 44.

[2493] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1019. See also M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 324.

[2494] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1016.

[2495] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 10 - 11.

[2496] *Ibid* 48.

[2497] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 132. For the full text of the Indian resolution, see *Ibid* 3.

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When Mrs Pandit had done, many of the other delegations rose and applauded enthusiastically.[2498] It is noteworthy that, in tone and substance, Mrs Pandit spoke of the Charter in 1946 much like Smuts had spoken of the Preamble at San Francisco in 1945.

From a purely legal perspective, the South African case was 'more soberly presented.'[2499] It was essentially as follows: Indians in South Africa were national of the Union of South Africa.[2500] They 'had finally become South African citizen and India could no longer claim any responsibility for . . . them.'[2501] The question was, therefore, 'purely an internal one,'[2502] and therefore *ultra vires* pursuant to Article 2(7).[2503] Article 2(7) of the Charter qualified, except for enforcement measures under Chapter VII, all the provisions of the Charter:[2504]

> [W]ithin the domain of its domestic affairs, a state is not subject to control or interference, and it action could not be called into question by any other state.

It was true that exceptions to the rule of non-interference in domestic affairs could be found in treaty obligations. However, the so-called Cape Town Agreement of 1927 and the joint communiqué issued by the Governments of India and South Africa in 1932, 'were not instruments giving rise to treaty obligations.'[2505] The two governments had reaffirmed 'their recognition of the rights of South Africa to use all just and legitimate means for the

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[2498] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 147.

[2499] HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 47.

[2500] Doc A/BUR of 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* (24 October 1946) 19 'Statement of Field Marshal Smuts.'

[2501] Doc A/C 1 & 6 of *Ibid* 44.

[2502] Doc A/BUR/SR of *Ibid* 19. Smuts knew that any interference by the Indian government would stir up white opposition. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 233.

[2503] To forestall criticism, Smuts admitted that there were exceptions to Article 2(7): Firstly, under Chapter VII relating to enforcement measures to maintain peace and security, which were not relevant to the issue before the Assembly; secondly, under treaty obligations, which did not exist in the present matter as th Cape Town agreement was merely a political declaration between two Commonwealth countries; and thirdly, where human rights and fundamental freedoms had been violated, which were also not involved in this case. L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 140.

[2504] As quoted in HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 47.

[2505] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 3. See also WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

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maintenance of Western standards of life,' and South Africa had announced her intention of setting up an optional scheme of assisted emigration and a program for 'uplifting' the Indians who remained. Pending a fair trial of these measures, South Africa had announced her decision not to proceed further with certain discriminatory legislation.[2506]

That the experiment had not worked, the South African Government claimed, was due to the uncooperative attitude of the Indian Government.[2507] However, the Government of South Africa was willing to submit the question to the International Court of Justice.[2508] The Court alone was in a position to say 'whether there are international obligations arising under agreements between the two Governments or under provisions the Charter which have been broken by South Africa.'[2509]

South Africa further conceded that a treaty establishing an internationally recognised formulation of human rights might constitute and exception to the rule of domestic jurisdiction. However, human rights had never been internationally agreed-upon. The Charter itself did not define such rights, and only spoke of promoting them.[2510] Moreover, South Africa had not denied her Indian population such elementary human rights as the right to existence and sustenance, freedom of conscience and speech, and free access to tribunals administering justice.[2511] The mere fact of discrimination was not a violation of the Charter.

Political rights were also not fundamental - '[w]hole clauses in the Trusteeship Agreements would have to be struck out on the ground that they were discriminatory, if

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[2506] HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 47 - 48.

[2507] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 18 - 19, 66 - 67, 86 - 95.

[2508] This request, sponsored by a resolution put forward by Great Britain, the United States, and Sweden, were not acted upon. H Lauterpacht *International law and human rights* (1950) 193.

[2509] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 44.

[2510] *Ibid* 3. See also L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 140.

[2511] 'The only definition of fundamental human rights and freedoms of which the United Nations could at present take cognizance was the four freedoms set out in the Charter. These freedoms exist today in South Africa.' Doc A/C 1 & 6 *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 21.

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that argument held.'[2512] Nor was it conceivable to Smuts that the framers of the Charter could ever have intended to elevate political equality to the status of a fundamental human right.[2513] 'Such an argument was tantamount to saying that the more progressive races should be retarded by the less progressive, if, in fact they constituted a majority.'[2514] South Africa maintained that, '[e]quality in fundamental rights and freedoms could only be assured in a multi-racial State by a measure of discrimination in non-fundamental rights.'[2515]

South Africa must be allowed to assume responsibility for a wise settlement of a difficult problem. Conditions in South Africa were not widely known. When local conditions were considered 'against the background of two clashing civilizations, with primitive Africa looking on at the conflict,' there was no room for outside political intervention.[2516]

South Africa made clear that it had no desire to stifle debate upon the question, but challenged the competence of the General Assembly to intervene, even by recommendation, in a matter essentially within the domestic jurisdiction of a sovereign state.[2517] South Africa claimed the 'fundamental right to have its international obligations determined by the Court and not by a mere political forum,'[2518] and moved that the International Court of Justice be:[2519]

[2512] *Ibid* 3 - 4, 20 - 21, 44. Compare Mrs Pandit: 'There could be no question of "fundamental" and "non-fundamental" freedoms; freedom was indivisible, and should be enjoyed by all peoples, whatever their colour.' *Ibid* 45.

[2513] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

[2514] Doc A/C 1 & 6 *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 21.

[2515] *Ibid*.

[2516] *Ibid* 44, 90 - 91, 17 - 18.

[2517] *Ibid* 4, 47.

[2518] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1009.

[2519] *Ibid* 1009 - 1010. For the full text of the proposed South African amendment, see HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 48 n40. See also WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469 - 470.

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> [R]equested to give an advisory opinion on the question whether the matters referred to in the Indian application are, under Article 2, paragraph 7, of the Charter, essentially within the domestic jurisdiction of the Union.'

Smuts cabled the acting Minister of External Affairs in Pretoria, Jan Hofmeyr, that the Union's colour policies 'are most unpopular . . . in a World Assembly like UNO, and the atmosphere is chilly all round.' The best course, Smuts believed, was to have the Indian complaint referred to the International Court of Justice. 'There is of course no certainty whether the Court will declare the Indian questions an essentially domestic issue. But on balance the Court may be our safer course.'[2520]

Smuts' legal argument failed to win many supporters, for 'the mood of the Assembly was such that appeals to cold reason were of no avail whatsoever.[2521] If judged by the entrenched rules of diplomatic practice within the western world, Smuts' arguments were cogent. However, as Hancock points out, those rules had become obsolescent:[2522]

> A new precept for diplomats was coming into currency at UNO: if you have a good political argument, use it; if not, use a bad political argument; if you have no political argument at all, use a legal argument.

Smuts did not have any good (or even bad) political argument with which to parry India's thrust. He pinned almost his whole case upon a legal argument - 'It got him nowhere.'[2523]

Smuts described the Indian onslaught to his friend Margaret Gillett:[2524]

> Mrs Pandit, Nehru's sister, made an impressive speech, much applauded, in which she attacked South Africa, and said India was all for equality, non-discrimination, and all the other good things. But see what is actually happening in India, the greatest country of discrimination and communal disunity in the whole world. I wish to avoid pogroms and bloody clashes in Natal, hence my attempt to keep the conflicting elements apart on sound and sensible lines.

[2520] PM 136/2 tel 18 Saleg Washington to Primesec 13 November 1946 as quoted in JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 25 - 26.

[2521] Lord Curson 'Note on the Indian delegation' (27 December 1946) IOR L/E/9/1392 as quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 141. Mazower writes that the General Assembly showed marked impatience with idea of allowing law to determine policy. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 178

[2522] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 470.

[2523] *Ibid*. Friedman writes that 'a barren defence, completely out of step with the spirit of the new world order that the adoption of the Charter heralded.' B Friedman *Smuts: A reappraisal* (1976) 176.

[2524] Smuts to MC Gillett 27 October 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 102.

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To his wife, Smuts wrote:[2525]

> Mrs Pandit, sister of Nehru and head of the Indian delegation, made violent accusations against South Africa in her speech - with loud applause from the assembly and the galleries. It is clear that we shall have a hard time here as public feeling is strongly against our colour bar policy in South Africa, particularly in an organization where colour is strongly represented and where is much prejudice against us and that policy.

In words that proved eerily prophetic, Smuts stated:[2526]

> South Africa will in future have to keep in view how strongly world feeling against her policy is. It may yet bring forth many woes for our country and people.

In early November 1946, Smuts told his wife that they 'were having a difficult time at the conference.'[2527] 'Feeling is very strong against our colour and colour bar policy,' Smuts stated, 'especially in a conference where colour is so heavily represented.'[2528] Smuts estimated that 'probably two-thirds or more' of humanity was coloured, and most of them were represented at the United Nations.[2529] There was 'much Indian propaganda,' and it proved more acceptable than Smuts would have thought.[2530] 'We do our best, but it is uphill work,'[2531] Smuts said.

At the United Nations, Smuts spoke out in favour of the British Commonwealth.[2532] There was a 'strong feeling,' he reported to his wife, 'that it is mere exploitation of other, inferior peoples . . .'[2533] This 'attitude' was part and parcel of the 'strong anti-colour feeling' in which South Africa, too, was caught up.[2534]

[2525] Smuts to SM Smuts 27 October 1946 (translation) in *Ibid* 105.

[2526] *Ibid*.

[2527] Smuts to SM Smuts 2 November 1946 (translation) in *Ibid* 108.

[2528] *Ibid*.

[2529] *Ibid*.

[2530] *Ibid*.

[2531] *Ibid*.

[2532] *Ibid* 109.

[2533] *Ibid*.

[2534] *Ibid*.

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Keith Hancock remarks that, to Smuts, 'this paraphernalia of committees, resolutions and speech-making seemed pseudo-legalistic, boring and futile.'[2535] Temperamentally, Smuts was at odds with the entire process.[2536]

During the general debate on this issue, the representatives of many states expressed strong opinions that discrimination was a violation of the Charter; that discriminatory practices by the South African Government had been clearly proven; that the Cape Town Agreements clearly constituted international legal obligations; and that the United Nations clearly had competence.[2537] The question was, therefore, predominantly political, and it would be an evasion of responsibility to consult the International Court of Justice on these legal aspects of the question.

Wellington Koo, the leader of the delegation of the Republic of China, concurred with Mrs. Pandit that this was an issue of 'predominantly political character.'[2538] He did not deny that there was a legal aspect to it, but it was 'essentially a political question.'[2539]

China was not convinced that the Court would be able to reach a unanimous decision, 'in view of the important issues involved . . . which affect . . . the honour of a whole continent, the pride of half the human family, the dignity of man himself . . .'[2540]

Koo concluded his submission as follows:[2541]

> Personally, having known the Field Marshal for the past quarter of a century, and knowing his past record, I shall always look upon him as one one of the greatest living internationalists, and I feel certain that, in his own heart, he is most anxious to find a way out that will settle this unfortunate issue between two Members of the United Nations, and I believe, if the Assembly does adopt this resolution, that he will be the last person not to try his best to give satisfaction to the General Assembly.

[2535] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

[2536] *Ibid*.

[2537] HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 49.

[2538] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1020.

[2539] *Ibid*. China's interest in the question stemmed from the fact that the particular legislation to which India objected, was not confined to Indians, but to all Asiatics. The objectionable legislation, according to the Chinese delegate, applied particularly to the acquisition or renting of property. In one province of the Union of South Africa, Asiatics were confined to certain areas, and in another province were restricted from buying property only from other Asiatics. *Ibid*

[2540] *Ibid* 1021.

[2541] *Ibid* 1023.

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A succession of delegates declared their support for India - Mr De La Colina of Mexico,[2542] Mr Alfaro of Panama,[2543] Mr Romulo of the Philippine Republic,[2544] and Mr. Arrosa of Uruguay.[2545] De La Colina believed that it was not in vain that various Articles of the Charter exhorted Members to promote universal respect for human rights and fundamental freedoms. It was not in vain that many delegations at San Francisco persistently urged that the phrase 'human rights and fundamental freedoms' be included in each of the relevant Articles of the Charter.[2546] Notwithstanding his support for the Indian position, the Mexican delegate nevertheless honoured Smuts: 'One of the most eminent statesmen of our time is a son of South Africa, Field-Marshal Smuts, to whom we have all gladly paid unstinting tribute.'[2547]

The Panamanian delegate pondered whether Article 2(7) truly constituted a barrier to the General Assembly considering the question raised by India.[2548] Alfaro asked rhetorically whether human rights were essentially within the domestic jurisdiction of the State. His unhesitating and emphatic answer was 'no, and a hundred times, no.'[2549] He continued:[2550]

> I submit that, by the San Francisco Charter, human rights have been take out of the province of domestic jurisdiction, and have been placed within the realm of international law. I submit that the United Nations have undertaken collectively to proclaim, to promote and to protect human rights, and by so doing . . . by the greatest of all covenants of history, the San Francisco Charter, have given birth to a new principle of the law of nations, the principle that the individual as well as the State is subject to international law.

Alfaro implored the General Assembly not to 'nail down human rights to the pillory of evasion, inconsistency and ineffectiveness.[2551]

[2542] *Ibid* 1023 - 1026.

[2543] *Ibid* 1026 - 1028.

[2544] *Ibid* 1028 - 1030.

[2545] *Ibid* 1030 - 1031.

[2546] *Ibid* 1024.

[2547] *Ibid* 1025.

[2548] *Ibid* 1026.

[2549] *Ibid*.

[2550] *Ibid*.

[2551] *Ibid* 1028.

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For Romulo of the Philippines, the Indian grievance struck 'at the heart and core of our United Nations.'[2552] By referring the question to the Court - which would amount to 'discreet abstention' - the delegates could not strengthen the organisation or allay the qualms of their conscience.[2553] 'With all due respect to the wise and learned men' who counselled the reference of the matter to the International Court, the Philippine delegate felt himself constrained to say that this was, 'first and above all, a moral question.'[2554]

The General Assembly could not discharge its obligations under the Charter to the peoples of the world by 'refusing to exercise its moral judgment and by calling upon some other organization to pass a cold judicial eye over the legal and constitutional merits of the case.'[2555] He, too, despite the position he had taken, paid tribute to Smuts:[2556]

> I say this having, as I have, the highest personal respect and admiration for that author of the Preamble to the United Nations Charter written in San Francisco, the revered statesman, our very beloved colleague, Field-Marshal Smuts.

Mr Winiewicz, the delegate from Poland, stated that, having been under the rule of racial and national discrimination resulting from the doctrine of the *Herrenvolk* idea, Poland could not remain indifferent when a similar fate befell others.[2557] He stated that, in fact, discriminatory legislation existed in South Africa. It was based upon a factor over which no human being has any control: on the colour of the skin.[2558] Could the delegates seek refuge and deceive their conscience by a legal formula, disregarding entirely the political character of the case?[2559]

[2552] *Ibid*.

[2553] *Ibid*.

[2554] *Ibid*.

[2555] *Ibid* 1029.

[2556] *Ibid* 1030.

[2557] *Ibid* 1038.

[2558] *Ibid*.

[2559] *Ibid* 1039.

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The attitude of many delegates could be summarised in the words of the Soviet delegate, Vyshinsky, who did not want the 'moral-political' aspects of the questions submerged in 'marshy legal soil.'[2560]

The British Attorney-General, Sir Hartley Shawcross, was under firm instructions to argue that the dispute concerned a purely domestic matter and should not, therefore, be discussed at all.[2561] Shawcross, urged his fellow delegates that this, of all mattes, should be dealt with coldly and dispassionately.[2562] This was a 'grave and serious matter,' important not only for the parties involved, but also for the future of the organisation.

Should the Assembly ignore the appeal of a Member state for an authoritative decision on whether the Assembly had jurisdiction to try that State before it condemned it, the delegates would be leading their organisation 'into the gravest danger for the future.'[2563] The denial of South Africa's appeal for an authoritative legal decision would do far more harm to the United Nations, than it will ever do good to the Indians in South Africa.[2564]

[2560] As quoted in HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 49. Mr Vyshinsky delved into the history of discriminatory legislation in South Africa, reaching as far back as the republics that predated the Union of South Africa. He claimed that discrimination had been 'systematically fostered' in South Africa and that continued to be fostered. In fact, it was increasing year by year, assuming a 'more and more provocative and acute character.' Having been defeated on the moral-political plane, the South African delegation was attempting to transfer the whole question to the juridical plane. Vyshinsky did not believe that the Union would succeed, despite the support of a 'very able jurist,' Sir Hartley Shaw cross, who wasted his 'unquestionable talents and abilities' on an unworthy cause. Shawcross spoke 'as a good advocate of the South African Government in this matter.' 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1041 - 1042.

[2561] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 142. In the words of a British journalist, Shawcross 'made no apologies for poking around some of the more explosive charges' in 'an issue loaded with the dynamite of self-pride.' In so doing, he gave: '[A] very creditable performance of a local lawyer, pointing out from a high fence, how uncomfortable it might be if the neighbours started looking for skeletons in each other's cupboards. What would happen, he asked, if the UN should inquire into the caste system in India? What if it enquired into freedom of speech and press privileges in all states? What if it enquired into the denial of privileges to those of negro blood?' Alistair Cooke The *Manchester Guardian* 27 November 1946 as quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 142.

[2562] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1033.

[2563] *Ibid*.

[2564] *Ibid* 1034.

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With regard to China's concern that the International Court of Justice may not be able to reach a unanimous decision with regard to this issue, Shawcross stated:

> We cannot preserve the International Court of Justice in cotton wool under a glass case only to be taken out and allowed to act when we know that we can put something before it upon which it is obviously certain to agree.

Shawcross asked:[2565]

> Who could regard with anything but contempt an organization so uncertain, so unsure of the ground upon which it wanted to act, that it would not refer the matter to its now judicial organ for decision?

The question was not, what were the merits, but what were the powers that the General Assembly possessed in the matter. To give an emotional and a political answer to that question was to strike at the very roots of the rule of law which the Organization was pledged to uphold and enhance.[2566]

Undoubtedly with reference to Mrs Pandit, the United Kingdom delegate said: 'We heard . . . some very brilliant appeals to our emotions by practised political orators. They have very rightly been applauded.'[2567] However, noted Shawcross, the Assembly allowed Smuts - who had devoted his whole life in the service of liberty and humanity - to pass in silence.[2568] The emotions were indeed strange masters, but this was not a matter for stirring up the emotions of the delegates, which were so easily stirred up.[2569] This was a matter demanding to be dealt with 'quite coldly and dispassionately and with a full sense of the responsibility to our . . . Organization, and, perhaps not less, to the Indians of South Africa.'[2570]

2565 *Ibid*.

2566 *Ibid* 1035.

2567 *Ibid*.

2568 *Ibid*. Millin writes that Smuts appeared at before the United Nations in 1946 'struggling to give what could be given lest all be lost.' Millin observes that Smuts was received in disdainful silence, while the people in the galleries rose to their feet and applauded Mrs. Pandit. SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 140.

2569 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1035.

2570 *Ibid*.

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Mrs Pandit, in her 'brilliant speech,' referred to the matter as a 'test case, and so it was.'[2571] What could be the danger in asking the International Court for its help, Shawcross asked? Why not let the Court aid the Assembly so that its eventual decision on the matter may at least be based on an accepted legal foundation which would be regarded as authoritative throughout the world?[2572]

Mrs Pandit had stated that all she asked was justice. 'But is that all that is asked for here, or is what is sought an emotional political verdict swayed by eloquence and oratory?' Shawcross asked. He continued:[2573]

> If it is justice that is sought, justice that all the world will recognise . . . what better way is there to secure justice than by the Court which we have established as our own organ to administer justice between the nations of the world?

On the question of the admissibility of the dispute before the General Assembly, Great Britain played the leading role in arguing against India.[2574] Britain was anxious to avoid a defeat for Smuts, both because it believed the legal issue to be important, but also because such an outcome would strengthen the hand of South African Nationalists - 'who advocated far tougher measures of racial discrimination.'[2575]

However, Britain was certainly not the only state to agree with Smuts that the question of the General Assembly's jurisdiction over the matter should be referred to the International Court of Justice.[2576] The United States, for one, warned against the 'majestic instancy' of rushing to reach a decision that might be taken on a possibly erroneous basis.[2577] Juridically-minded West European states favoured a reference to the the Court,

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[2571] *Ibid*.

[2572] *Ibid* 1036.

[2573] *Ibid*. See also L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 147.

[2574] *Ibid* 142.

[2575] *Ibid* 143.

[2576] *Ibid*.

[2577] Cited in UK delegation to Foreign Office (29 November 1946) Telegram 2101 PRO DO 35/1239/G715/46 as quoted in *Ibid* 142.

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as did a number of Latin American members who feared the consequences of the erosion of the principle of domestic jurisdiction.[2578]

The Netherlands delegate, Mr Van Kleffens, expressed concern that the legal aspect did not receive sufficient consideration.[2579] What was there possibly to lose, he asked, if the General Assembly fortified itself with the best legal advice available?[2580] Mr. Kaeckenbeeck, on behalf of Belgium, did not believe that it was right to take a decision on the substance without first disposing of the preliminary question raised by South Africa pursuant to Article 2(7).[2581] The question as to the respective limits of the principles of intervention and non-intervention in the domestic affairs of Member States was so fundamentally important, that it should never be decided by omission, and without the most careful consideration.[2582]

And, since this was essentially a question of law, and since one of the parties had made a formal request that this question of law should be determined by the highest judicial instance, Belgium believed that the matter should be referred to the International Court of Justice.[2583] For the United Nations, this question implied 'a very serious choice between two methods:'[2584]

> [T]he purely political method, which claims absolute supremacy, and the politico-legal method which requires that questions of law shall be decided legally, and political questions politically.

Mrs Pandit spoke again, mostly in response to Shawcross' support for the South African position. She had expressed the hope that the British Commonwealth would at least remain neutral in this controversy. However, Shawcross' speech had shattered her hopes. She characterised his speech as 'entirely partisan however full of dialectical skill it may

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[2578] *Ibid*. Those member states that supported a reference to the ICJ included Belgium, Norway, Sweden, the Netherlands, New Zealand, Canada, Honduras, Guatemala, Ecuador, Brazil, Costa Rica, Argentina, Peru, and Turkey. Australia and Venezuela reserved their position. L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 142 n60.

[2579] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1031.

[2580] *Ibid* 1032.

[2581] *Ibid*.

[2582] *Ibid*.

[2583] *Ibid*.

[2584] *Ibid* 1033.

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have been.'[2585] Then Mrs Pandit made a final plea to the emotions and conscience of those 'who held the political fate of Asia and indeed the world in their grasp.'[2586] In expressing her gratitude to the Assembly, she stated:[2587]

> I want to thank you and to express, with all the sincerity at my command, not only of the people of India and the Indians in South Africa, but of the millions in every country whose hearts have been warmed and whose minds are eased by this expression of world opinion in defence of justice and fundamental human rights, for many have been the speeches, profound the sincerity, and warm the sentiments that we have heard . . . We shall remember this and know, in a way that cannot be forgotten, that justice, truth, and the oppressed have friends in every country and under every climate.

It was midnight on 8 December 1946, after a 12 hour debate, when the final roll call was taken 'in a hushed and tense atmosphere.'[2588] Each affirmative vote was crucial for India. The General Assembly rejected South Africa's request that the questions of competence be referred to the International Court of Justice. The vote was 21 for to 31 against, with

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[2585] *Ibid* 1045. In his address, Shawcross had referred to 'the Indian politicians, so unhappily divided by communal strife and discrimination in their own country . . .' Pandit launched a vitriolic attack on the United Kingdom representative, accusing him of 'not show[ing] good taste' and referring to 'these differences with evident and unconcerned glee.' She ascribed the 'unfortunate, but, I hope, temporary differences that exist in India and which are much evident in the American press . . .' to have been brought about largely by the role which the British Government had played between the various elements in India. *Ibid* 1045.

[2586] VL Pandit *The scope of happiness: A personal memoir* (1979) 210 as quoted in *Ibid* 148.

[2587] 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1046.

[2588] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 148; L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 724.

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two abstentions.[2589] The Assembly then adopted, by a vote of 32 for to 15 against, with 7 abstentions,[2590] a Joint Committee resolution which provided:[2591]

> *The General Assembly,*
>
> *Having taken note* of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:
>
> 1. *States* that, because of that treatment, friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired;
>
> 2. *Is of the opinion* that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter;
>
> 3. *Therefore requests* the two Governments to report at the next session of the General Assembly the measure adopted to this effect.

When the chairman declared the resolution adopted,[2592] there was prolonged applause and Mrs Pandit found herself surrounded by jubilant delegates. '[H]appy, excited, a little proud,' Mrs Pandit claimed an 'Asian victory.'[2593] To make certain that she had fulfilled her

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[2589] A/PV 52 1016 as referenced in HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 50.

[2590] A 'bare two-thirds majority,' notes Lloyd. L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 724. In the debate that followed, Britain strongly came to South Africa's defence, as did the other White Commonwealth representatives; for until very recently they had all been comrades in arms. The Communist countries solidly supported India. When the final votes were tallied, 32 nations rallied behind India, and 15 behind South Africa. Voting with the majority were the Communist bloc (six), the Afro-Asian states (12), some of the Latin American states (11), and three West European states. The states voting with South Africa were: Great Britain and the White Commonwealth (4), the United States and its Latin American satellites (7), and traditional friends of South Africa in Europe, namely Belgium, Holland, Luxembourg, and Greece. H Tinker *Race, conflict, and the international order: From Empire to United Nations* (1977) 111.

[2591] General Assembly, *Journal*, No 75, p 831 as quoted in H Lauterpacht *International law and human rights* (1950) 193. See also HW Briggs 'The United Nations and political decision of legal questions' (1948) 42 *Proceedings of the American Society of International Law at its Annual Meeting* 50. During the last week of November, the First and Sixth Committees adopted a French-Mexican resolution, which the General Assembly passed on 8 December 1946 with the required two-thirds majority: 32 votes for, 15 against, and seven abstentions. 'Treatment of Indians in the Union of South Africa: Report of the Joint First and Sixth Committee' in *United Nations official records of the second part of the first session of the General Assembly: Plenary meeting of the General Assembly verbatim record 23 October - 16 December 1946* 1007.

[2592] By 32 to 15 with seven abstentions, a 'bare two-thirds majority,' notes Lloyd. L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 724.

[2593] *Ibid.* Bhagavan states that the event was immediately proclaimed as an 'Asiatic victory,' the triumph of the world's dispossessed and aggrieved, and it was significant for setting the tone of what the new world organisations could be. The 'conscience of the world' was, evidently, something above the reach of individual governments, something to which they were answerable. M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 324.

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mission properly, she sought out Smuts and asked his pardon lest anything she had done might have failed to match the high standard of conduct set by Gandhi.[2594] 'My child,' Smuts replied, taking her hands in both of his, 'you have won a hollow victory, This vote will put me out of power in the our next elections but you will have gained nothing.'[2595]

To Justice Chagla, a member of the Indian delegation, Smuts confessed his personal unhappiness at the trend in South Africa but, he warned, 'a time will come when you will realise that what I have done is nothing compared with what will be done and what will happen in the future.'[2596]

3.2 The implications

India's victory over Smuts at the first meeting of the General Assembly marked a turning point of huge significance - for the United Nations, for the human rights movement, for South Africa, and, alas, for Smuts.

3.2.1 Implications for the United Nations

In 1946, South Africa, Great Britain, and the United States had confidently expected that an objection on a point of law, and a very important one at that, would receive serious consideration and in all likelihood lead to India's complaint being ruled *ultra vires*.[2597] However, as Lloyd point out, the new organisation was proving very different from its predecessor, 'where so much attention was paid to legal niceties and it was almost instinctive to turn to lawyers for advice.'[2598] In consequence, India 'was able to make a small breach in the wall' of Article 2(7).[2599] In fact, Article 2(7) would soon become a dead letter as far as human rights were concerned, and the individual would become a subject of international law.

[2594] L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 724.

[2595] *Ibid*. Pandit admitted that Smuts was proven correct. The fact revealed, ultimately, the complexities and potential limitations of the new world organisation. M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 324.

[2596] As quoted in L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 148 - 149.

[2597] *Ibid* 153.

[2598] *Ibid*.

[2599] *Ibid*.

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With specific reference to the demographics of the new international organisation, Friedman argues that the results could not have been otherwise.[2600] Even at that early stage, the United Nations reflected the re-distribution of political influence in the post-war world. Of the 50 original members of the United Nations, no less than 27 were former colonial possessions.

This meant that the epoch of white supremacy was over.[2601] The newly emancipated powers of the Africa-Asia group could no longer be treated as a negligible factor in world affairs.[2602] This was a foretaste of things to come, when the decolonised Third World would use the General Assembly to express their extreme dissatisfaction with some aspects of the *status quo*.[2603] Moreover, as in the case of India in 1946, they would receive support from the Soviet Union and its satellites.[2604]

3.2.2 Implications for the human rights movement

Mazower comments that the General Assembly set aside a strict interpretation of the Article 2(7), the domestic jurisdiction clause. Legal niceties were ignored, and in yet another sign of the waning power of international law, the letter of Charter was trumped by the spirit of human rights and moral anger, ironically precisely those forces that Smuts himself had invoked eighteen months earlier, and, in fact, in his anti-legalist stance in the founding of the League 25 years earlier. Smuts, as it were, had defeated himself.[2605]

India read much into her triumph in 1946.[2606] Jawaharlal Nehru proclaimed that, '[t]he New India had made a most auspicious beginning on the state of inter-national politics,' and the United Nations' momentous decision was a 'convincing demonstration that the United Nations will be a real force for peace and for the improvement of human

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[2600] B Friedman *Smuts: A reappraisal* (1976) 178.

[2601] *Ibid* 179.

[2602] Noting that colonial powers were now in a permanent minority in the General Assembly, Great Britain deplored 'the general attitude of mind' that 'the possession of colonies is in itself something reprehensible.' M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 179.

[2603] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 153.

[2604] *Ibid*.

[2605] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 179.

[2606] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 151.

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relations.'[2607] Nehru rejected the 'reactionary view' that a state's treatment of its own nationals, however repressive, was a matter of domestic jurisdiction. '[T]he international community was now committed to the defence of human rights and fundamental freedoms.'[2608]

Likewise, probably the most eminent international law scholar of the time, Hersch Lauterpacht concluded that one of the effects of this resolution upon the interpretation of Article 2(7) of the Charter, is that, in accordance with the Charter, questions relating to human rights and fundamental freedoms are matters which by reason of their solemnly proclaimed international character are not essentially within the domestic jurisdiction of States in the full sense of Article 2(7).[2609]

3.2.3 Implications for South Africa

In South Africa, the 1946 defeat came as:[2610]

> [A] severe and salutary shock . . . break[ing] open the pressurized chamber of South African complacency and . . . expo[sing] the man in the street for the first time to the atmosphere of the outside world.

Lorna Lloyd believes that India' victory at the United Nations encouraged the Nationalists to 'nail the issue of colour even more firmly to their masthead.'[2611] While Smuts, upon returning to South Africa in 1946, spoke of a 'solid wall of prejudice,' 'unbelievable

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[2607] As quoted in *Ibid*.

[2608] As quoted in *Ibid*.

[2609] H Lauterpacht *International law and human rights* (1950) 195. To the contrary, Schifter argues that the formulation used in the resolution vividly demonstrates the caution with which the General Assembly approached human rights issues in its early years. In additions to emphasising the re-establishment of friendly relations between the two governments, the Resolution also contained a vague reference to the Charter, without specifying that the 'relevant provisions' referred to were indeed the human rights provisions. Schifter concludes that: 'It was hardly a bold step. Cautiously, and without fanfare, the United Nations General Assembly had slipped into the human rights field.' R Schifter 'Human rights and the United Nations: The South African precedent' (1992 - 1993) 8 *American University Journal of International Law and Policy* 364. On the reason for the General Assembly taking an interest in the conflict between India and South Africa, Kunz concluded in 1949: 'Notwithstanding Jessup's opinion (as expressed in PC Jessup *A modern law of nations* (1948) 87 and further as mentioned in J Kunz 'The United Nations Declaration of Human Rights' (1949) 43 *American Journal of International Law* 318), we have the authority of the Director of the Division of Human Rights in the United Nations Secretariat that it was primarily on account of the alleged violation of an agreement, not on account of the alleged violation of human rights, that the Assembly accepted jurisdiction. *Ibid*.

[2610] Confidential communication between Sedgwick (acting British high commissioner) to Addison (secretary of state, dominions office) 2 January 1947 PRO W892/9/68 DO 35/1295/G715/46 as quoted in L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 725.

[2611] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 152.

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misunderstanding,' and 'mischievous propaganda' in New York,[2612] the Nationalists nevertheless attacked him and condemned the United Nations resolution as likely to lead only to clashes and strife.[2613]

Although India's successful complaint brought no relief for South African Indians,[2614] India 'brilliantly succeeded' in another aim - that of throwing the international spotlight of the world's largest diplomatic forum on South Africa.[2615] It marked the beginning of the United Nations' preoccupation with South Africa:[2616]

> Only a small shove was needed to fully open the door that India had skilfully pushed ajar in 1946. Eventually that happened, and members of the UN regularly picked over the skeletons in South Africa's cupboard, while resolutely keeping their own doors shut.[2617]

In the end, however, the cupboards of other members of the United Nations would also be opened, revealing their skeletons.

3.2.4 Implications for Smuts

At the United Nations in 1946, Smuts faced a new world.[2618] It was a world that he had helped to create, but which he now faced as a transgressor.[2619] The person who was responsible for the formal introduction of the words 'human rights' into the language and

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[2612] UK High Commissioner in South Africa to Dominions Office (19 December 1946) Telegram 549 IOR L/E/9/1405 as quoted in *Ibid*. In a long broadcast upon his return from the United Nations, Smuts stated: 'We have found unbelievable misunderstandings about race and colour conditions . . . solid mass of prejudice . . .' JC Smuts *Jan Christian Smuts: A biography* (1952) 406.

[2613] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 152.

[2614] *Ibid* 132.

[2615] *Ibid*. Heyns states that the Resolution of the General Assembly set the tone for the treatment which South Africa was to receive for the next five decades. CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 346.

[2616] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 153.

[2617] Likewise, Ballinger writes that the most important consequence of this resolution was the opening of the door to a wider international discussion of South Africa's racial policies. RB Ballinger 'UN action on human rights in South Africa' in E Luard (ed) *The international protection of human rights* (1967) 251 - 252. Elsewhere, Lloyd states: 'From these small beginnings - the consequence of discriminatory legislation against just 2.5% of her total population - South Africa precipitated the odium of the world and provided an opening for an outright assault on the foundation of her political system.' L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 725.

[2618] B Friedman *Smuts: A reappraisal* (1976) 179.

[2619] *Ibid*.

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politics of the United Nations, also became the first person to be arraigned by that institution as a human rights violator.[2620]

The resolution adopted by the General Assembly, proclaimed to the world 'the iniquities impugned to South Africa.[2621] The spotlight of world opinion played steadily and fiercely upon the proceedings, probably all the more so because Smuts himself was involved.[2622] It was a bitter experience for Smuts, and indeed a new experience.[2623] It was the first time in his career that Smuts emerged from a high international assembly with his stature diminished, and the prestige of his country damaged.[2624]

Alan Paton writes that Smuts was no longer one of the chief ambassadors of a great family of nations. He was only the leader of a small white aristocracy seeking to cling to its privilege in a changing world.[2625]

Smuts was clearly shaken by the harshness with which the General Assembly impugned his South African policies.[2626] His correspondence at this time did not display anger so much as bewilderment.[2627] On the day of the vote in the General Assembly - 8 December 1946 - he stated to an American friend: 'I have passed through a difficult time at New York. Doubts like clouds pass over our minds and dim the glory of the day.'[2628] The

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[2620] And the person who set the precedent for succeeding generations of states that violate human rights to unsuccessfully invoke state sovereignty.

[2621] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

[2622] B Friedman *Smuts: A reappraisal* (1976) 179.

[2623] *Ibid*.

[2624] *Ibid*. Hitherto Smuts had upheld the honour of South Africa with distinction. But now his prestige has declined: '[T]here were no standing ovations to do homage to the prophet of a new world order, to the great Commonwealth statesman who stood in the van of progress, to the great warrior who during the darkest days of the war had proclaimed, in ringing tones, his faith in the ultimate triumph of the 'Man of Nazareth' over the 'Man of Berchtesgaden.' *Ibid* 179 - 180. Dubow states that, in retrospect, Smuts' presence at San Francisco can be seen as the start of a precipitous political decline, a process highlighted by his failure to comprehend fully the democratising environment of postwar internationalism, or the narrowing context of nationalism at home. S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 46. Beukes also comments that Smuts' neglect to solve the Indian and native problems and remove inequality and discrimination became the weapon which destroyed his plans for the future and his standing and acceptance in the international community. P Beukes *The holistic Smuts: A study in personality* (1989) 193.

[2625] A Paton *Hofmeyr* (1964) 437; See also B Friedman *Smuts: A reappraisal* (1976) 180.

[2626] J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 3.

[2627] L Blom-Cooper 'Jan Christiaan Smuts (1870 - 1950): Middle Templar extraordinary' (2013) *Advocate* 44.

[2628] Smuts to F Lamont 8 December 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 111.

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'rebuff at New York' left South Africa 'dazed and amazed,' Smuts told Margaret Gillett on Boxing Day 1946.[2629] 'The refusal of South West Africa incorporation . . . and the Indian rebuff' had come as a 'great shock' to South Africans.[2630]

The shock to South Africa was even greater than to him, Smuts claimed, because he could understand these event in their larger international context.[2631] Although he did his 'best to calm the waters . . . a wound has been inflicted which will continue to be painful and hurt the pride and self-respect' of the South African people.[2632] Smuts was fully cognisant that the decision of the General Assembly would make his task more difficult in South Africa.[2633] He would have to 'keep public opinion steady,' lest something happened that may 'vitally affect the future of this country [South Africa] in this world of growing dangers.[2634]

Despite his attempts to attenuate the shock of his defeat to his Quaker friend, it is clear that it stung Smuts, perhaps more than any other political failure, save for the defeat that he was to suffer at the hands of Malan's Nationalist Party eighteen months hence. 'Many things are unsettled or have gone wrong. My own mission to UNO a failure,' Smuts wrote to Margaret Gillett even before the vote in the General Assembly on either the South West Africa or Indian issues.[2635]

'UNO gave me a bad blow,' he told Florence Lamont.[2636] Smuts believed he was 'the only one of the old gang' left . . . still to carry on, and still to be called to account for my sins and for the greater sins of others.'[2637] His experience at the General Assembly in 1946 had given Smuts his 'first great knock[,] and since then others have found courage

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[2629] Smuts to MC Gillett 26 December 1946 in *Ibid* 113.

[2630] *Ibid*.

[2631] *Ibid*.

[2632] *Ibid*.

[2633] *Ibid*.

[2634] *Ibid*.

[2635] Smuts to MC Gillett 27 November 1947 in *Ibid* 111.

[2636] Smuts to F Lamont 31 March 1947 in *Ibid* 129.

[2637] *Ibid*.

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and opportunity to administer theirs also.'[2638] He had expressed the same sentiment to Margaret Gillett in January 1947:[2639]

> My failure with UNO has been a bitter experience, even where I know, or perhaps more *because* I know, that essentially it is South Africa's as much as mine. The world does not know or understand us, and we feel this deeply, even when we are conscious that we are much to blame in it all . . . I don't despair of the future, but it will not be easy to keep South Africa steady in this avalanche of condemnation which has so suddenly and unexpectedly overwhelmed it.

Smuts concluded his letter to Florence Lamont in March of 1947 as follows:[2640]

> We sorrow for the world. And we are all the more grateful from this piece of good earth where the sun shines and the people as a whole are happy in spite of UNO strutters and carpings.

The events in New York in 1946 stung Smuts too late for action or for meaningful words. Within two years he was out of office, and, two years after that, he was dead.[2641]

At the time, and for the following six years, the complaints of the Indian government were confined to accusing the South African government of denying justice to approximately 300 000 South Africans of Indian decent.[2642] The Indian government did not make any similar accusations on behalf of the millions of black and 'coloured' South Africans. Keith Hancock writes:[2643]

> Not until Smuts had been two and a half years in his grave did the government of India and its allies in UNO mount an attack on the whole wide front against South Africa's policies of colour.[2644]

[2638] *Ibid*.

[2639] Smuts to MC Gillett 14 January 1947 in *Ibid* 116 - 117 (Smuts' emphasis).

[2640] Smuts to F Lamont 31 March 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 131.

[2641] L Blom-Cooper 'Jan Christiaan Smuts (1870 - 1950): Middle Templar extraordinary' (2013) *Advocate* 44.

[2642] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 473.

[2643] *Ibid*.

[2644] The attack took the form of Resolution 616A of 5 December 1952. Hancock notes that two conscious landmarks along the road to this doctrinal confrontation were: from the United Nations' side, the adoption of the Universal Declaration of Human Rights in 1948; from the side of the South African government, the Group Areas Act of 1950. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 473.

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Smuts, however, understood from the outset the likely universal significance of his specific dispute with Mrs Pandit.[2645] In November 1947, Smuts wrote to Margaret Gillett from the second meeting of the General Assembly in New York:[2646]

> [T] going is very bad here. Violent opposition both on the Indian and South West Africa questions. Colour queers my poor pitch everywhere. I quite understand and can look at it all philosophically. But South Africans cannot understand. Colour bars are to them part of the divine order of things. But I sometimes wonder what our position in years to come will be when the whole world is against us.

[2645] *Ibid* 473.

[2646] Smuts to MC Gillett 27 November 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 110.

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CHAPTER 10

THE SMUTSIAN CONCEPT OF 'HUMAN RIGHTS'

The purpose of this chapter is to gain a better understanding of what Smuts may have meant when he introduced the phrase 'basic human rights' into his draft preamble of the Charter of the United Nations.

1. The human rights idiom during the early 1940s[2647]

Today we live in what Louis Henkin has called an age of rights.[2648] As A de Waal expressed it in a review in the *Times Literary Supplement* in 1999: 'If there is a global religion today, it is human rights.'[2649] Kirsten Sellars states that: 'Human rights are widely regarded as the guiding principle of global politics today;'[2650] they have become the *lingua*

[2647] The question about the meaning of the term 'human rights' in the early 1940s is situated within a larger topical debate about the birth of the international human rights movement. There has in recent years developed an influential new school of revisionist history, exemplified by the work of Samuel Moyn, which locates the origins of the international human rights movement in the 1970s, because it was only then that 'they were widely understood as a moral alternative to bankrupt political utopias,' such as socialism, nationalism, and communism. S Moyn *The Last Utopia: Human Rights in History* (2012) 227. The revisionists have come under scrutiny from among others, Philip Alston, who rejects the "big bang" theory of human rights. Alston argues that the history of human rights is both long and deep, which is not to say that its progress has been linear, steady, or even predictable. Alston states: 'Any meaningful history of human rights must disaggregate and address separately the different analytical dimensions of the overall enterprise. The enterprise of "human rights" consists of too many distinct facets to be reduced to one or two variables. The history and power of ideas, the force of grassroots social and political movements, the impact of legal and constitutional traditions, and the influence of institutions at both the domestic and international levels constitute indispensable elements that need to be factored into any effort to understand the origins, nature, and potential significance of the present regime.' P Alston 'Does the Past Matter? On the Origins of Human Rights' (2013) 126 *Harvard Law Review* 2077. Likewise, Paul Gordon Lauren points out that the historical origins of powerful visions that are capable of shaping world events and attitudes - like those of human rights - are rarely simple. Instead, they: '[E]merge in complicated and interrelated ways from the influence of many forces, personalities, and conditions in different times and diverse settings, each flowing in its own unique way like tributaries into an ever larger and mightier river.' PG Lauren *The evolution of international human rights: Visions seen* (2003) 4.

[2648] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 9.

[2649] As quoted in *Ibid*. 'Who can bad-mouth human rights?' asked an American commentator in 1977. 'It is beyond partisanship and beyond attack.' Ronald Steel in the 4 June 1977 edition of *New Republic* in an article entitled 'Motherhood, apple pie and human rights' as quoted in in M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 379; K Sellars *The rise and rise of human rights* (2002) 197. Whether rhetoric or reality, it is beyond cavil that human rights is a 'global phenomenon.' M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 379.

[2650] K Sellars *The rise and rise of human rights* (2002) inside flap front. One of the reasons for this phenomenon might be that nothing else offers the positive moral appeal of human rights. [2650] *Ibid* 197.

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franca of modern political discourse.[2651] Hurst Hannum argues that in perhaps no other facet of its work has the United Nations been so prolific or, some would argue, so successful as it has been in the adoption of new international norms of the protection of human rights.[2652] Cumulatively, a venerable code of human rights exists, governing practically every area of the relationship between individuals and the state.[2653]

It was during the Second World War that the concept of human rights 'broke through to the mainstream of public discussion.'[2654] Roosevelt's Four Freedoms speech, the repeated references thereto and to the Atlantic Charter, the American entry into the war,

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[2651] K Sellars *The rise and rise of human rights* (2002) 197. In the forward to Normand and Zaidi's *Human rights at the UN: The political history of universal justice* (2008) Richard Falk writes: 'Among the most improbable developments of the previous hundred years . . . is the spectacular rise of human rights to a position of prominence in world politics. This rise cuts across the grain of both the structure of world order and the 'realist' outlook of most political leaders acting on behalf of sovereign states.' As quoted in R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 52.

[2652] H Hannum 'Human rights' in CC Joyner (ed) *The United Nations and international law* (1997) 131. In support, the author refers 1988 United Nations compilation of human rights instruments lists 67 conventions, declarations, and other documents adopted under the auspices of the United Nations. These instruments range from narrowly focused recommendations, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (GA Res 20/33 (29 November 1985)), to such basic human rights texts as the two International Conventions on human rights (The International Convention on Economic, Social and Cultural Rights (16 December 1966) 999 UNTS 3 (1966) and the International Covenant on Civil and Political Rights (16December 1966) 999 UNTS 171 (1966)). BG Ramcharan also describes the development of international human rights norms as one of the United Nations' success stories. BG Ramcharan 'Norms and machinery' in TG Weiss & S Daws (eds) *The Oxford handbook on the United Nations* (2007) 443.

[2653] *Ibid*.

[2654] By way of example, the earliest British Foreign Office paper on the subject of human rights dates from 1941, and the first occasion on which 'human rights' appeared as a category in the annual index to the papers of the Foreign Office, is in 1945. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 10 - 11. Likewise Burgers notes that, before the Second World War, the idea to elevate human rights to international status was advocated in limited circles, without any meaningful political response. JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 471. '[A]ll this is little more than half a century old,' comments Mazower. M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 379. The human rights advocates of the inter-war era were essentially lone voices in the wilderness, as illustrated by the dearth of references to 'human rights' in the works of even the forward-thinking intellectuals. An edited volume of essays on freedom in 1940 by Europe's leading intellectuals, including Benedetto Croce, Jaques Maritain, Albert Einstein, and Harold Laski, did not contain even a reference to 'human rights.' By contrast, a similar project commissioned by the United Nations Economic, Social and Cultural Organization (UNESCO) in 1947, with many of the same contributors, focused exclusively on human rights. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 78. Burgers sets forth in detail the inter-war history of human rights. In this respect he addresses the League of Nations and the minority clauses; the contribution of pioneering international lawyers, to wit Alejandro Alvarez, André Mandelstam and Antoine Frangulis; and the advocacy in the League of Nations in the 1930s against the anti-semitic policies of the Nazi regime. However, none of these efforts by individuals or non-governmental organisations or movements elicited any meaningful response by the politicians. 'As far as I know,' states Burgers, 'there has not been any European opinion leader in the prewar years who picked up . . . the vital need for international protection of human rights.' Burgers acknowledges that the 'comeback of human rights to the political scene had not really started before the Second World War.' JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 449 - 450, 450 - 454, 455 - 459, 464, 448.

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and the publication of the United Nations Declaration, 'combined to generate widespread interest in human rights and their protection.'[2655]

'War is always a contest of words as well as of wounds,' notes Samuel Moyn.[2656] It would be incorrect to state that 'human rights' was a new term born of the Second World War. As a figure of speech it did, however, enter the lexicon of educated readers and influential commentators in the World War II era.[2657]

However, to determine what specifically was meant by this phrase 'human rights' being bandied about during the Second World War, is problematic. That is because the language of human rights is, to use Kenneth Cmiel expression, 'fluid.' The term has meant widely different things at different points in time.'[2658] This 'universalistic idiom' has evolved over time in the constant interplay between 'specific political settings and grand political claims.'[2659]

[2655] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 185.

[2656] S Moyn *The last utopia: Human rights in history* (2010) 48.

[2657] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 541. Before the war, the term was occasionally used to refer either to the much earlier expression, 'rights of man,' or to 'civil rights, a narrower legal term. *Ibid*. Modern conceptions of human rights grew out of legal traditions that emphasised individual rights, many of which were rooted in ancient conceptions of property rights, and expressed in written instruments and charters such as the Magna Carta of 1215, the Petition of Right of 1628, and the Bill of Rights of 1689, as but three English examples, and the American Declaration of Independence of 1776 ad the French Declaration of the Rights of Man and Citizen of 1789. *Ibid* 547 - 548.

[2658] K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 125. Cmiel stops short of calling it an 'empty signifier,' but his point is well-taken that the phrase can have diametrically opposed meanings to different people and at different times. *Ibid* 125 - 126. Moyn's believes that the phrase 'human rights' 'meant different things to different people' from the beginning. And, therefore, 'it meant nothing specific as various parties tried to give it sense.' S Moyn *The last utopia: Human rights in history* (2010) 49.

[2659] K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 126. With regard to the current debate about the origins of the international human rights movement, specifically regarding the years of the Second World War, Brian Simpson, for example, argues that the human rights movement, although 'fragmented and disorganised' was nevertheless well-established by 1944. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 219 - 220. He states that: 'The drafting of codes, the development of literature, and the general aggrandizement of the subject [of human rights], are largely a product of a movement that became influential during the latter years of the Second World War.' *Ibid* 11. In the same vain, Borgwardt finds in the Atlantic Charter the 'defining inaugural moment for what we now know as the modern human rights regime.' E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 504. Lauren states that the visionary language of the Atlantic Charter, followed by the forceful Declaration of the United Nations - eventually signed by 46 nations - 'marked a dramatic departure in the evolution of international human rights.' PG Lauren *The evolution of international human rights: Visions seen* (2003) 155. Moyn, on the other hand, argues that human rights histories that focus on the 1940s as the 'crucial era of breakthrough and triumph,' might be 'the most universally repeated myth about their origins.' S Moyn *The last utopia: Human rights in history* (2010) 6. Though the phrase was elevated to new potential significance in English during the Second World War, the 1940s were not to be the hour for 'human rights.' *Ibid* 42.

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Brian Simpson argues that, in the early 1940s, legal theoretical thinking on 'human rights' was incongruous.[2660] There was no clear consensus on what a 'human right' was.[2661] For example, was a 'human right' synonymous with a 'natural right,' or not? There was concordance that some rights were 'fundamental,' but no assent as to which rights should be included on the list of 'fundamental rights,' or how such a list should be structured.[2662]

Nevertheless, by 1944, there was extensive interest in the subject of 'human rights' (whatever the term's precise meaning), and a burgeoning belief that the protection of human rights against oppressive regimes should be embodied in the new world order.[2663] Moreover, there was a growing consciousness during the Second World War of the importance of 'human rights' and their relation to world peace.[2664] Early in the war already, Allied statesmen began making grandiloquent references to the new world on the far horizon.[2665]

[2660] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 49. It is true that the phrase 'human rights' has an extensive history. It was first used by Thomas Paine in 1791 in *The Rights of Man*, in which he translated the *Declaration of the Rights of Man and of the Citizen*, adopted by the French National Assembly on 27 August 1789. Paine wrote: 'The representatives of the people of France, formed into a National Assembly, considering that ignorance, neglect, or contempt of human rights, are the sole cause of public misfortunes and corruptions of Government, have resolved to set forth in a solemn declaration, these natural, imperceptible, and inalienable rights . . .' *Ibid* 9. Although the phrase was used intermittently in the 19th and early 20th centuries, before the Second World War it was by no means in common use. Simpson cites the following examples: In 1877 in a New York newspaper ('What does that little rat know about human rights?'); in the writing of James Bryce in 1888 ('We need only turn to the Declaration of Independence and the original constitutions of the States . . . to perceive that abstract theories regarding human rights had laid firm hold on the national mind.'); and, 'rather curiousl[ly],' in EM Foster's novel *Howard's end* in 1910 ('Margaret's anger and terror increased every moment. How dare these men label her sister! What hours lay ahead! What impertinences that shelter under the name of science! The pack was turning on Helen to deny her human rights . . .') *Ibid* 10.

[2661] Cmiel observes that activists have often painted t'human rights' ideas as 'straightforward and simple,' when, in truth, they are 'complex and often internally contradictory.' K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 32.

[2662] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 49.

[2663] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 219. Morsink likewise points out that Roosevelt's enunciation of the Four Freedoms was part of a movement that gathered strength in the early 1940s and which wanted to make the protection of human rights part of the conditions for peace at the end of the war. J Morsink T*he Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 1.

[2664] PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 21. As Simpson notes, the new world order would guarantee, not only security through a permanent peace, but also a righteous world in which governmental abuses would be brought under control of the international community. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 219.

[2665] E Luard A *history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 17.

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1.1. Roosevelt's 'Four Freedoms' speech (6 January 1941)

Roosevelt recognised the need to engage in the public debate over war and peace and to shape the global agenda along United States lines.[2666] When Roosevelt addressed the United States Congress on 6 January 1941, almost a year before declaring war on Japan, he concluded his State of the Union message with his famous peroration on the Four Freedoms.[2667] He proclaimed that he sought to secure 'four essential freedoms' for all: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear - everywhere in the world.[2668] Significantly, in the speech Roosevelt employed the phrase 'human rights,' thereby facilitating the popularisation of its use:[2669]

[2666] See R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 88. The authors state that Roosevelt's 'bold foray into the war of ideas is considered one of the strategic masterpieces of his presedency.' See *Ibid*.

[2667] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 468.

[2668] PG Lauren *The evolution of international human rights: Visions seen* (2003) 137. 'In his Annual Message to Congress in January 1941, Roosevelt expressed his 'four essential freedoms' thus:

'The first is freedom of speech and expression - everywhere in the world.

The second is freedom of every person to worship God in his own way - everywhere in the world.

The third is freedom from want - which, translated into world terms, means economic understanding which will secure to every nations everywhere a healthy peacetime like for its inhabitants - everywhere in the world.

The fourth is freedom from fear - which, translated into international terms, means a worldwide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor - anywhere in the world.'

President's Message to Congress, 87 *Congressional Record* (daily ed 6 January 1941) 44, 46 - 47 as quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 516 - 517. Burgers notes that the formulation of the Four Freedoms was 'entirely of his [Roosevelt's] own making.' During the drafting process of the State of the Union message, after it had already gone through three versions, Roosevelt surprised his collaborators by adding a section which opened as follows: 'In the future days, which we seek to make secure, we look forward to a world founded upon four essential freedoms.' Roosevelt then articulated the freedom of speech and expression, the freedom of worship, the freedom from want, and the freedom from fear. JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 468. As Brian Simpson explains, the Four Freedoms 'began life some months earlier as "Four Fears" in a press conference on 5 June 1940.' Roosevelt explained that his purpose was the elimination of the fear that one could not worship God in one's own way, which was freedom of religion; the fear of not being able to speak out, which was freedom of expression; the fear of arms; and the fear of not being able to have normal economic and social relations with other countries, which meant freedom of commerce and freedom of culture. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 172.

[2669] As quoted in *Ibid* 172 (Author's emphasis). See also Roosevelt as quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 137; JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 448.

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> The nation has placed its destiny in the hands and heads of its millions of free men and women; and its faith in freedom under the guidance of God. *Freedom means the supremacy of human rights everywhere*.[2670] Our support goes to those who struggle to gain those rights or to keep them.

In conclusion he stated: 'This is no vision of a distant millennium, It is a definite basis for a kind of world attainable on our own time and generation.'[2671]

'The Four Freedoms' was a 'direct ideological response to Nazi tyranny' and his proposal of United States values to shape the postwar order.[2672] Roosevelt could not present the war as a battle for the defence of United States domestic interests, because by December 1941, the United States was of course not yet a belligerent. Moreover, a majority of the American people favoured the isolationist *status quo*.[2673]

Roosevelt 'mustered his impressive powers of persuasion to paint the dangers of totalitarianism and offer a positive vision of universal rights.'[2674] He chose to present the issue in ideological terms. Roosevelt was convinced that the internationalisation of the care for human rights was the proper idea for uniting the American people against the forces of totalitarianism.[2675] Normand and Zaidi comment as follows on the Four Freedoms:[2676]

> By situating the war in Europe as a clash between rights and repression, freedom and tyranny, Roosevelt found his essential justification, indeed his imperative for taking sides in the great conflict

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[2670] LB Sohn 'How American international lawyers prepared for the San Francisco bill of rights' (1995) 88 *American Journal of International Law* 540 - 541.

[2671] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 137.

[2672] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 81 - 82.

[2673] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 469. Sellers explains that, at the outbreak of the Second World War, isolationism was the dominant creed in Washington, DC, and had been ever since Wilson's failed attempt to convince the United States Senate to become a member of the League of Nations after the Great War. The isolationists believed that the American national interest was best served by avoiding any entanglements in European conflicts. Roosevelt, however, firmly believed that United States interests could be secured - and in fact extended - only by participation in the war. In 'human rights' Roosevelt found the ideal issue with which to popularise his brand of internationalism and win public support for the United States entering into the war. K Sellars *The rise and rise of human rights* (2002) x.

[2674] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 90.

[2675] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 469. For purposes of mobilising public opinion, Roosevelt believed it expedient to 'cast the man rights idea in simple form.' Moreover, Burgers believes, Roosevelt wanted to include more than only the classic civil liberties. He therefore declared 'freedom from want' as a condensation of social and economic rights. *Ibid*.

[2676] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 89.

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raging across the Atlantic. In this way, human rights were made the centerpiece of the U.S. argument for both war and peace.

Roosevelt's enunciation of the Four Freedoms appealed to intellectuals and civic organisations across the world, raised high hopes among civil society and human rights advocates.[2677] The Four Freedoms became part of a movement that gathered strength in the early 1940s, and that wanted to make the protection of human rights part of the conditions for peace at the end of the war.[2678]

Roosevelt was of course not the first politician to invoke the concept of human rights for political ends. This practice can be traced back to the revolutions of the 18th century.[2679] However, notes Kirsten Sellars, the United States was the first nation in history to 'possess both the power and the interests to pursue an international crusade in the name of all humanity,' in both the war and the peace that followed.[2680]

Mark Mazower observes that, despite racial segregation in the South, 'rights talk came more naturally to Americans, with their constitution, than it did to the British.[2681] The British, who desperately desired an alliance with the United States, both during and after the war, 'were content to go along with this.'[2682] Anthony Eden, the British Foreign Secretary, closely allied the British government with the Four Freedoms in a speech on 29 May 1941: 'We have found in President Roosevelt's message to Congress in January

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[2677] *Ibid* 82.

[2678] J Morsink T*he Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 1. Later developments came to be traced back to this much publicised speech. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 172. For example, Smuts stated: 'The Atlantic Charter marked a great step forward which only requires more careful definition and elaboration to become a real Magna Carta of the nations.' JC Smuts *Toward a better world* (1944) 263. And, on 19 October 1943, Smuts stated at the Guildhall in London: "The Atlantic Charter already contains the sketch for our future blueprint for security and our rich and bitter experience will enable us to complete the picture.' *Ibid* 305. It is worth noting, states Kennedy, that Roosevelt's public emphasis in these years upon the freedoms articulated in the 'Four Freedoms' speech, anticipates the lofty language of the Preamble to the United Nations Charter itself. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 25. Bentwich and Martin opine that the Atlantic Charter had a 'strong formative influence' on the San Francisco Charter. N Bentwich & A Martin *A commentary on the Charter of the United Nations* (1951) xiv. Likewise, when the drafters of the Universal Declaration wrote in their Preamble that 'the freedom of speech and belief and freedom from fear and want ha[ve] been proclaimed as the highest aspiration of the common people,' they knowingly paid tribute to the American president and his ideals. J Morsink T*he Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 1.

[2679] K Sellars *The rise and rise of human rights* (2002) xi.

[2680] *Ibid*.

[2681] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 387.

[2682] *Ibid*.

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1941 the keynote of our own purpose . . .'[2683] Thus, the British government likewise committed itself to the cause of human rights as a war aim.[2684]

It should be noted that, a 'considerable gulf' separated the conception that individuals should be protected principally against their own governments, and the Four Freedoms speech, or its progenitors.[2685] It is quite clear that the policy of the United States at this time accommodated the principle of non-intervention in the domestic affairs of states, and the inviolability of sovereignty.[2686]

Furthermore, only the first two freedoms are freedom of individuals; freedom from want and freedom from fear are freedoms of nations.[2687] Retrospectively, the individual character of all the freedoms came to be emphasised, while the commercial character of the third freedom was softened. 'History, as ever,' concludes Brian Simpson, 'was rewritten.'[2688]

[2683] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 174. The British response to the Four Freedoms first came from Lord Halifax, then ambassador in Washington, in a white papers submitted to the War Aims Committee: '[F]or all men the right to speak, write and think freely within the law and to have access to the thoughts of others; the rights of free association, both national and international, with their fellow men; the right to live without fear of aggression, injustice or want; the right to believe and worship as conscience may dictate. It is the vindication of these rights that all men passionately desire . . . the principal war aim of my people and those who are fighting with us is to win this life and death struggle for the cause of human freedom. As quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 90.

[2684] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 175. See also L Henkin 'Human rights and state "sovereignty" (Sibley Lecture, March 1994)' (1995 - 1996) 25 *Georgia Journal of International and Comparative Law* 34.

[2685] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 173.

[2686] *Ibid*.

[2687] *Ibid*. Simpson adds that both these freedoms - freedom from want and freedom from fear - echo both the new Deal and the idea that disarmament was the solution to the ills of the world. *Ibid*.

[2688] *Ibid*.

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1.2 The Atlantic Charter (14 August 1941)[2689]

According to Elizabeth Borgwardt, the 'immediate purpose' of the Atlantic Charter was to punctuate the moral contrasts between Anglo-American values and the fascism of the Axis powers.[2690] The Atlantic Charter became the paradigmatic statement of Allied principles:[2691]

> Cautious and confused as it was, the Charter was nevertheless the first official statement - to the American and British people and to the world at large - outlining what would be the war's aims and the shape of the postwar world to come.[2692]

The Atlantic Charter has come to be regarded as a landmark in the history of the international protection of human rights.[2693] For example, Borgwardt finds therein the 'defining inaugural moment for what we now know as the modern human rights regime.'[2694]

However, the Atlantic Conference was not aimed at establishing a system for the future protection of human rights. From Great Britain's point of view, apart from general matters of strategy, the primary aim was to secure maximum support from the United States in the war against Germany.[2695] From the American perspective, the aim was to

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[2689] For background to the Atlantic Charter, see Chapter 1 (1.2) above.

[2690] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 504. Lauren also writes that by issuing the Atlantic Charter, Roosevelt and Churchill 'sought to delineate a sharp contrast between themselves and their adversaries.' PG Lauren *The evolution of international human rights: Visions seen* (2003) 139.

[2691] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 510, 531.

[2692] Normand & Zaidi writes that, in the end, Roosevelt and Churchill agreed on 'vague but stirring' language primarily focused on the battle for freedom and democracy and the need for total victory against the forces of tyranny. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 91.

[2693] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 179; R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 92.

[2694] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 504. According to Borgwardt, the Atlantic Charter may be framed as 'a global version of Roosevelt's "Four Freedoms" speech, providing the conceptual scaffolding for new thinking about human rights.' *Ibid* 531. Borwardt argues that this modern human rights regime constituted the synthesis of four fundamental qualities: 'First, highlighting traditional political rights and core values; second, incorporating a broader conception of so-called "Four Freedoms" rights, which included vague references to economic justice, third, suggesting that the subjects of this vision included individuals as well as the more traditional unit of sovereign states; and finally, emphasizing that these principles applied domestically as well as internationally. This was a fresh formulation of a much older term, and all four of these elements continue to inform our conception of the term "human rights" today.' *Ibid* 506.

[2695] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 177.

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discuss issues of strategy and general policy not only with regard to the war in Europe, but also, the threat posed by Japan in the Pacific.[2696] Moyn notes that, at the Atlantic Conference it were the domains of armament and economics that received most attention.[2697]

Moreover, the Atlantic Charter specifically mentions 'the right of all peoples,' and 'sovereign rights' in the third principle; nowhere does it mention 'individual rights' or the phrase 'human rights.'[2698] This is a surprising omission, 'in light of its reputation as a founding document of the coming human rights system.'[2699] The sixth clause resounded, in part, Roosevelt's Four Freedoms.[2700] This clause pronounced the hope of establishing a peace 'which will afford assurance that all men in all the lands may live our their lives in freedom from fear and want.'[2701]

Brian Simpson points out emphatically that the Atlantic Charter contains not the least hint of any commitment to the international protection of human rights.[2702] Similar to the

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[2696] *Ibid*. Much more than Britain, which at the time had more imperative concerns, the United States was also perturbed over the post-war settlement and whether Britain had entered into any secret pacts with regard to post-war European frontiers. *Ibid*. Simpson also points out that Roosevelt was personally anxious to secure political advantage from the Atlantic Conference. This entailed, for the appeal of the electorate, producing a public document that set forth what had been achieved at the meeting. *Ibid*. In press conferences, Roosevelt compared the Atlantic Charter to the Magna Carta, the United States Constitution, and even to the Ten Commandments. E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 505.

[2697] The most publicised part of the shipboard meeting was the religious service that brought it to a close. Moyn points out that observers thought the anthem for Christian soldiers, and not the allusion to human rights, most movingly symbolised the Anglo-American antithesis to Hitler's tyranny. S Moyn *The last utopia: Human rights in history* (2010) 48.

[2698] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 333.

[2699] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 92.

[2700] The sixth principle of the Atlantic Charter envisages a world structure which would stand against the two great evils of the age: (i) war; and (ii) penury and unemployment. See N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 20.

[2701] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 180. Therefore, it is this clause, remarks Simpson, that became the basis for the later claim that the Charter was a significant event in the history of human rights. *Ibid*. Roosevelt later claimed to Congress that that the Charter championed two individual rights: '[T]he declaration of principles includes of necessity the world need for freedom of religion and freedom of information.' As quoted in *Ibid* 181. In reality, however, these were nowhere stated in the Charter.

[2702] *Ibid* 182.

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'Four Freedoms,' the Atlantic Charter acquired its significance in the history of human rights retrospectively, 'by the rewriting of history.'[2703]

1.3 The Declaration of the United Nations (1 January 1942)[2704]

Roosevelt himself coined the term 'United Nations' for all the countries at war with the Axis powers.[2705] To underscore the idea of a common purpose while understating the military component,[2706] and to widen the appeal beyond the Anglo-American powers and their close military allies, Roosevelt substituted the term 'United Nations' for that of 'Associated Powers.'[2707] Churchill, who, characteristically, preferred the name 'Grand Alliance,'[2708] nevertheless appreciated the rhetorical power of this semantic change.[2709]

The 26 original signatories included the governments in exile of countries then under German occupation: Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, Yugoslavia and De Gaulle's Free French. India, not as an independent state, was also a signatory. Roosevelt, who 'wholly rejected the notion of the equality of states,' insisted that the United States, the United Kingdom, the Soviet Union

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[2703] *Ibid*.

[2704] For background to the Declaration, see Chapter 1 (1.2) above.

[2705] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 543.

[2706] *Ibid*.

[2707] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 92.

[2708] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 543. In Roosevelt's mind, the term 'Grand Alliance' harked back too strongly to the 'Holy Alliance' of the Concert of Europe. M Mazower *Governing the world: The history of an idea* (2012) 510.

[2709] It invoked Byron's 'Childe Harold:'
'Here, where the sword united nations drew
Our countrymen were warring on that day!
And this is much - and all - which will not pass away.'
As quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 92. Roosevelt's assistant, Daisy Stuckley, recalled how the concept of the 'United Nations' was born in Churchill's bedroom at the White House: FDR got into his bed, his mind working and working . . . Suddenly he got it - United Nations! The next morning, the minute he had finished his breakfast, he got into his chair and was wheeled up the all to WSC's room. He knocked on the door, no answer, so he opened the door and went and sat on a chair and the man went out and closed the door - He called to WSC and in the door leading to the bathroom appeared WSC - a 'pink cherub' (FDR said) drying himself with a towel and without a stitch on! FDR pointed to him and exploded: 'The United Nations!' 'Good!' said WSC. As quoted in M Mazower *Governing the world: The history of an idea* (2012) 197 - 198.

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and China - sign first, thereby signalling the separation of the Big Four from the other signatories.[2710]

It was in the preamble to this Declaration that 'human rights' *eo nomine* first appeared:[2711]

> Being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world.

Lest there be any misunderstanding of the crusade at hand, Roosevelt declared that this was nothing short of a global struggle against 'tyranny and cruelty and serfdom' in which there could never be a compromise 'between good and evil,' and where 'only total victory' could bring about the realisation of human rights.[2712] The text expresses the conception that savagery and lack of respect for human rights are inextricably linked. This lead to general acceptance that human rights and the notion of 'civilisation' go hand-in-hand.[2713]

Elizabeth Borgwardt asserts that, in relation to the 'moment' that the term 'human rights' acquired its modern meaning, a 'strong candidate' would be the signing of the Declaration of the United Nations on 1 January 1942.[2714] However, the Declaration was

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[2710] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 185.

[2711] 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 2 (Author's emphasis). See also CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 333; AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 183; R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 54; JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 448.

[2712] 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations system and its predecessors volume 1* (1997) Document 2. See also PG Lauren *The evolution of international human rights: Visions seen* (2003) 140.

[2713] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 183.

[2714] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 542.

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not primarily as a call for the international protection of human rights.[2715] It was, first and foremost, a military concordat.[2716] The preservation of human rights served merely as an argument to reinforce the principal policy of pursuing unconditional surrender.[2717] Only by achieving total victory over Germany and Japan could the 'United Nations' secure the future enjoyment of freedom and liberty.[2718]

Samuel Moyn argues that human rights made their 'fateful entry' into world history as a 'politically inspiring phrase,' as a 'war slogan' to justify why the Allies had to be 'now engaged in a common struggle against savage and brutal forces seeking to subjugate the world.'[2719] In his sloganeering, Roosevelt did not move, either conceptually or politically, to the problem of the role of human rights in the remaking of the international order.[2720] There was no suggestion in January 1942 that 'the terrain of application of the idea would be in world governance, as opposed to the temporary interruption of normal interstate relations to put down extreme totalitarianism.'[2721]

Brian Simpson notes that the Declaration did not in any way suggest that the rights tangentially invoked should be upheld through an international system.[2722] The value of the Declaration lay in its amplification of the idea that 'human rights were in some sense

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[2715] In this respect, Moyn notes that, in his sloganeering, Roosevelt did not move, either conceptually or politically, to the problem of the role of human rights in the remaking of the international order. There was not suggestion in January 1942 that that 'the terrain of application of the idea would be in world governance, as opposed to the temporary interruption of normal interstate relations to put down extreme totalitarianism.' S Moyn *The last utopia: Human rights in history* (2010) 51.

[2716] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 183. Although the Declaration mentioned 'human rights' directly, it did so only once in the preamble and even there in the context of the larger goal of military victory. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 93.

[2717] Normand and Zaidi confirms that the Declaration's focus on human rights, 'was clearly subordinate to its purpose of establishing united war front; human rights were mentioned in the conservative sense of a cause to be preserved rather than rights to be extended to new areas. *Ibid*.

[2718] The Declaration set forth an affirmative obligation on signatory states to not conclude any separate armistice or peace with Germany, Japan, or their allies. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 183.

[2719] S Moyn *The last utopia: Human rights in history* (2010) 49. Moyn reasons that it seems unlikely that Roosevelt, who apparently inserted the reference to human rights in the final revision of the declaration, could have mean to introduce something conceptually new. *Ibid*.

[2720] S Moyn *The last utopia: Human rights in history* (2010) 51.

[2721] *Ibid*.

[2722] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 185.

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what the war was really all about.'[2723] It explicitly included the protection of human rights among the war aims of the 'United Nations.'[2724] In the words of Winston Churchill, one of the stated objectives of the war was 'the enthronement of human rights.'[2725]

1.4 *The rights of man* campaign of HG Wells and Hersch Lauterpacht's *An international bill of rights of man*

Not surprisingly, notes Paul Gordon Lauren, the first elaborations of visions for human rights during the Second World War, came from civil society groups and individual crusaders, rather than governments.[2726] Also, although in the early months of the war, private individuals in Great Britain wrote extensively about war and peace aims, they, similarly to the politicians, were silent on the topic of a proclamation of rights set out in some form of charter.[2727] The singular exception was HG Wells.

As early as the second month of the war, HG Wells - a 'utopian socialist, committed to educating the populace to believe in world government'[2728] - wrote a letter to the *The Times*.[2729] In it, he drew attention to 'the extensive demand for a statement of War Aims on the part of young and old, who want to know more precisely what we are fighting

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[2723] *Ibid*.

[2724] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 470.

[2725] As quoted in AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 206.

[2726] PG Lauren *The evolution of international human rights: Visions seen* (2003) 147. In addition to the contributions of HG Wells and Hersh Lauterpacht, which are set forth in some detail in the text, during the war years, several charters or bills of rights were proffered by civil society from such varied bodies as The Movement for Federal Union (1940), the Catholic Association for International Peace (1941), the New Educational Fellowship Conference (1942), the Commission to Study the Organization of Peace (1943), and the American Law Institute (1944), as well as by the American jurist, Quincy Wright, and the French philosopher, Jaques Maritain. K Sellars *The rise and rise of human rights* (2002) x. The discussion in the text is limited to Wells and Lauterpacht, as these individuals *may* have had an influence on Smuts. There is evidence that Smuts and Wells corresponded, and Lauterpacht was professor of international law at Smuts' *alma mater*, Cambridge University.

[2727] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 161.

[2728] *Ibid*.

[2729] The letter appeared on 23 October 1939. JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 464; PG Lauren *The evolution of international human rights: Visions seen* (2003) 147. Normand and Zaidi describes Wells' campaign as 'the most remarkable, quixotic, and influential of the prewar campaigns to revive the human rights idea. . .' R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 76.

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for.'[2730] The foremost way in which to answer this demand was, according to Wells, the method of a declaration of rights in the best tradition of the Atlantic parliamentary peoples:[2731]

> At various crises in the history of our communities, beginning with the Magna Carta and going through various Bills of Rights Declarations of Rights of Man and so forth, it has been our custom to produce a specific declaration of the broad principles on which our public and social life is based . . . The present time seems peculiarly suitable for such a restatement of the spirit in which we face life in general and the present combat in particular . . .

Wells' letter to *The Times* included the text of his draft 'Declaration of Rights,' consisting of a short preamble and ten articles.[2732]

The draft declaration was continuously revised by a blue ribbon drafting committee assembled by Wells, as comments poured in from the famous and ordinary alike.[2733] The final version of Wells' declaration was published in serial form in the *Daily Herald* under the title, 'The Rights of Man,' from 5 to 24 June 1940.[2734] The declaration was now introduced by a lengthy preamble, followed by ten clauses, addressing, *inter alia*, the rights to nourishment, medical care, education, access to information, work, the freedom of discussion, association and worship, movement, and protection from violence, compulsion and intimidation.[2735]

Shortly thereafter, *The rights of man, or what are we fighting for?* was published as a Penguin Special.[2736] Large public meetings were held in Britain to promote the

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[2730] As quoted in JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 464.

[2731] As quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 77; JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 464; PG Lauren *The evolution of international human rights: Visions seen* (2003) 147.

[2732] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 464. See also R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 77. The ten articles proposed by Wells enumerated a comprehensive list of social, economic, civil, and political rights, including the right to food and medical care; the right to education and access to information; the right to work; the right to free discussion, association, worship, and movement, and the right to protection from violence and intimidation. *Ibid*.

[2733] *Ibid*.

[2734] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 465.

[2735] *Ibid* 465 - 466.

[2736] *Ibid* 467.

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declaration.[2737] In addition to disseminating the *The rights of man* series in the United Kingdom,[2738] Wells ensured that it received widespread distribution through 48 countries, and that his declaration was published in many different translations.[2739] Copies were also dropped behind enemy lines in Europe.[2740] In addition, Wells solicited responses from the world's leading political figures, including, but not limited to, Franklin and Eleanor Roosevelt, Jan Smuts, Jan Masaryk and Eduard Benes of Czechoslovakia, Mohandas Gandhi and Jawaharlal Nehru of India, Chiam Weizmann of the Jewish Agency, and a number of Chinese philosophers.[2741]

Burgers ascribes to HG Wells' *Rights of man* campaign[2742] of the early 1940s an importance in the revival of the human rights idea not shared by other historians of human rights, notably Brian Simpson. Burgers suggests that Wells' ideas had a significant influence on the political decision-makers of the day, especially Roosevelt. In this respect Burgers writes: 'Roosevelt must have been encouraged . . . by the initiative of HG Wells. The two men knew each other well.'[2743] Burgers points to the fact that Roosevelt had sent Wells comments on his draft declaration of the rights of man.[2744]

In Simpson's view, assessing the influence of Wells' work is problematic.[2745] There is no reference whatsoever in any Foreign Office papers to Wells' ideas,[2746] nor is there any evidence that President Roosevelt took any notice of Wells' ideas after the latter wrote to

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[2737] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 77.

[2738] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 467.

[2739] PG Lauren *The evolution of international human rights: Visions seen* (2003) 147. It was translated into literally all European languages, as well as 'Chinese, Japanese, Arabic, Urdu, Hindi, Bengali, Gujarati, Hausa, Swahili, Yoruba, and Esperanto.' R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 76.

[2740] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 385.

[2741] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 76; PG Lauren *The evolution of international human rights: Visions seen* (2003) 147 - 148.

[2742] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 464 - 470.

[2743] *Ibid* 470.

[2744] *Ibid*.

[2745] See AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 166.

[2746] Simpson believes that Foreign Office officials would have viewed Wells' work as 'wholly fanciful.' *Ibid*.

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the American president.[2747] Simpson does, however, believe that Wells 'may . . . have had some indirect influence in linking the formal enumeration of human rights to the conception of war aims.'[2748]

Normand and Zaidi claim that the committed advocacy of Wells and other intellectuals and jurists, eventually helped to lay the groundwork for the establishment of international human rights.[2749] In their own time, however, they remained on the margins of political discourse, dismissed in intellectual circles, and ignored by politicians in the leading liberal European states.[2750] When Wells lectured abroad to promote his vision of international human rights, officials of the British Foreign Office referred to him as 'a somewhat senile, half-extinct prophet . . . much better kept at home.'[2751]

More specifically to the topic of this thesis, it is likewise problematic to assess the influence of Wells' ideas on Smuts' conception of human rights. Burgers asserts that Wells had corresponded with Smuts regarding his Declaration.[2752] Christof Heyns states: 'Smuts' formulation [of human rights] was in all probability inspired *inter alia* by Roosevelt's Four Freedoms Speech . . . the Atlantic Charter and *possibly* also the works of HG Wells.[2753]

It is true that Smuts and Wells corresponded with regard to Smuts' pamphlet on the League.[2754] It is also clear from Smuts' writings that he was familiar with Wells' earlier

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[2747] *Ibid*.

[2748] *Ibid*.

[2749] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 78.

[2750] *Ibid*.

[2751] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 155.

[2752] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 467. See also AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 166.

[2753] CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 342 n44.

[2754] See *Ibid*. ('Presumably Wells' letter of 25 December 1918 . . . in which he sys he read Smuts' pamphlet "with the greatest admiration," referred to the latter's proposal on the League of Nations.') A copy of Smuts' letter to Wells, dated 28 December 1910, thanking the latter for the aforementioned letter, is on file with the author.

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work.[2755] But there is no direct evidence if, or the extent to which, Smuts was influenced or even took notice of Wells' ideas on individual rights.[2756] As Heyns points out: 'Smuts was no ardent admirer of Wells.'[2757] In a letter of 29 June 1934, Smuts stated that Wells was 'very longwinded and boring,' and he declared that, 'Wells was no prophet, or son of a prophet.'[2758] They also differed sharply about South Africa's racial policies.[2759]

On 7 December 1942, Hersch Lauterpacht,[2760] Whewell Professor of International Law at Cambridge University, and one of the most distinguished international lawyers of the day, addressed the Grotius Society on the topic, 'The law of nations, the law of nature, and the rights of man.'[2761] By the autumn of 1943, Lauterpacht had largely completed a

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[2755] On 27 February 1937, Smuts wrote to MC Gillett: 'Wells and a number of others urge the abolition of sovereignty. That is both impractical and dangerous at present. I would adopt a much more limited program . . .' Smuts to MC Gillett 27 February 1937 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 67. In another letter to MC Gillett on 9 May 1940, Smuts stated: 'We do but see in a glass darkly the shapes of things to come.' Smuts to MC Gillett 9 May 1940 in *Ibid* 220. This was a reference to Wells' work, *The shape of things to come*, first published in 1933. Hancock mentions that Smuts' reading during the first year of the Second World War included books on politics by, among others, Wells. WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 345.

[2756] Heyns does note that, according to a letter from Wells to Smuts, dated 22 October 1943, the two men 'did engage in extensive correspondence on Wells' human rights proposals . . . but the original correspondence could not be traced in the Transvaal archives.' CH Heyns 'The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 342 n44.

[2757] *Ibid*.

[2758] As quoted in *Ibid*.

[2759] In this regard Heyns refers to the *Evening Standard* of 16 March 1943 and 23 March 1943. *Ibid*. See also S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 56.

[2760] For a thorough analysis of Lauterpacht's views on an international bill of rights and his involvement with the United Nations Charter, the Universal Declaration of Human Rights, and the European Convention on Human Rights, see AWB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 49 - 80; M Koskenniemi, *The gentle civilizer of nations: The rise and fall of international law 1870-1960* (2001) 353 - 412.

[2761] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 98. Rare exceptions notwithstanding, explains Simpson, common lawyers of the period had not the slightest interest in the enunciation of schemes of individual rights, much less in their international protection. AWB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 53. It is obvious that the growing knowledge of the fate of European Jewry underlay Lauterpacht's choice of a topic. Lauterpacht's writings adopt a 'severely professional style,' reflecting his belief in international law as a science. His paper therefore did not make any reference to the horrific events which were at that time overtaking European Jews, and indeed his own family in Poland. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 98. After the German invasion of the Soviet Union, the Lwow, Stanislawow, and Tarnopol districts - the Lauterpacht family hailed from Lwow - became part of the General Government, an area under German control but not incorporated into the Reich. The mass murder of Jews there began in 1941 and intensified in 1942. Lauterpacht's parents, his brother and sister, and all but one of their children were murdered. AWB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 53.

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book, entitled *An international bill of rights of man*.[2762] By the time it appeared in 1945, the notion that the protection of human rights was an Allied war aim, which should be attended to in any post-war settlement, had become widely accepted.[2763]

Lauterpacht divided his book into three parts: the first containing an exhaustive review of the historical and philosophical development of the idea of inalienable natural rights; the second a bill of rights with detailed commentary on each of its 20 articles;[2764] and the third, significantly, measures of implementation and enforcement.[2765] No one, except Lauterpacht, seriously addressed what was to be done with such an international bill of rights once the substance had been settled, and what problems there would be in establishing mechanisms of implementation and enforcement.[2766] Lauterpacht's proposed bill of rights was legal document, not a political manifesto, and it was intended both to confer definite and enforceable rights and duties in international law between states, and to confer rights on individuals.[2767]

[2762] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 98 - 99; M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 385.

[2763] AWB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 55.

[2764] These articles covered two principal topics: (i) traditional civil and political liberties; and (ii) a duty upon the state to provide, within its means, the right to work, health care, education, and social security.

[2765] H Lauterpacht *An international bill of rights of man* (2013, first published 1945).

[2766] AWB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 55 - 56. So, for example, the American Law Institute produced an 'excellent' substantive text - though it was never adopted - but the scholars involved 'never got around to deciding what was to be done with it - whether it was to be a domestic or international instrument, and how, if at all, it was to be given teeth.' *Ibid* 56. The approach Lauterpacht adopted was radically different from that which was to prevail within the Foreign Office, under the dominating influence of Eric Beckett. Beckett assumed the position that the first issue to be addressed should be the definition of rights and their limitations. Only then should issues of implementation and enforcement be considered. Lauterpacht's approach was diametrically opposed to that of the Foreign Office. The critical issue, to be decided at the outset, was the institutional arrangements that could and ought to be established if the international protection of human rights were ever to become a reality. Definitions were of secondary importance. Lauterpacht argued that adopting an international bill of rights that did not impose international obligations would convey the false impression of progress, but be essential a step backwards, and '. . . would come dangerously near a corruption of language.' As quoted in *Ibid* 57.

[2767] Koskenniemi has written critically of Lauterpacht's emphasis on the significance of legal doctrine for the world of international relations, rather than the significance of political factors. Lauterpacht took as his subject international law, which he conceived to be an autonomous discipline, quite distinct from politics. His writings reflect a belief in the autonomy of law which is no longer so readily accepted as once was the case. M Koskenniemi, *The gentle civilizer of nations: The rise and fall of international law 1870-1960 (2001)* 393 - 394 As Simpson notes: 'Lauterpacht functioned in an intellectual world in which belief in the rule of law had not yet been corroded by realism.' AWB Simpson 'Hersch Lauterpacht and the genesis of the age of human rights' (2004) 120 *Law Quarterly Review* 62

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Lauterpacht drew particular attention to the significance of Article 11 of his proposed international bill of rights, which dealt with colonies and mandated territories, and placed their political development under international supervision and control. Brian Simpson comments that this proposal was anathema to the Colonial Office:[2768]

> Its view of Lauterpacht, if it ever had one, would not merely have categorised him as unsound, but have placed him somewhere in the ranks of the agitators and the troublemakers who plagued that institution.

1.5 The *Proposals for the establishment of a general international organization* ('Dumbarton Oaks Proposals') (9 October 1944)[2769]

The aim of the Dumbarton Oaks discussions was generally to decide upon the broad structure of an international organisation to replace the League of Nations; to formulate the principles that would govern the functioning of the organisation; and to establish the procedures pursuant to which it would perform its functions and, if required, enforce its decisions.[2770] The inscription on the mansion dating from 1801 - *Quod severes metes* (Reap what you sow) - served as a constant reminder to the Dumbarton Oaks delegates to attempt avoid the pitfalls of the first attempts at multilateral post-war order, barely twenty five years previously.[2771]

[2768] *Ibid* 59 - 60.

[2769] For background to the Dumbarton Oaks Proposals, see Chapter 1(1.2) above. For a comprehensive and penetrating exposition of the Dumbarton Oaks Conference and Proposals, see RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990). See generally also LM Goodrich & AP Simons *The United Nations and the maintenance of international peace and security* (1955) 9 - 10; JP Humphrey 'The UN Charter and the Universal Declaration of Human Rights' in E Luard (ed) *The international protection of human rights* (1967) 40; E Luard *A history of the United Nations volume 1: The years of Western domination, 1945 - 1955* (1982) 27 - 32; K Månsson 'Reviving the 'Spirit of San Francisco': The lost proposals on human rights, justice, and international law to the UN Charter' (2007) 76 *Nordic Journal of International Law* 220; CE Burckel (ed) *Who's who in the United Nations: The authoritative, illustrated, biographical key of persons associated with the United Nations* (1951) Appendix A; B Broms *The United Nations* (1990) 38 and further; M Waters *The United Nations: International organisation and administration* (1967) 10; R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 54.

[2770] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 239; PG Lauren *The evolution of international human rights: Visions seen* (2003) 161.

[2771] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 142; PG Lauren *The evolution of international human rights: Visions seen* (2003) 161.

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Significantly, none of the proposals submitted by the delegations at Dumbarton Oaks so much as mentioned human rights.[2772] However, Roosevelt was concerned that the absence of any mention of human rights would cause a scandal in United States civil society in light of his own championing of the concept, not to mention public outrage in response to wartime atrocities.[2773]

After lengthy deliberations, it was agreed that the human rights idea would be included as 'negligible line'[2774] 'buried out of sight'[2775] at the end of the first section of Chapter IX Section A paragraph 1.[2776] Chapter IX dealt with 'Arrangements for Economic and Social Cooperation.' The agreed-upon text read:[2777]

> With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and *promote respect for human rights and fundamental freedoms*.

However, it rapidly became clear from the reaction to this document that the 'Great Powers' attempt to brush human rights under the carpet' was not going to be successful.[2778] The British and Russians had failed to foresee the force of public opinion within the United States.[2779] Well before Dumbarton Oaks, private organisations in the United States had strenuously demanded the international protection of human rights in

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[2772] Even the draft international bill of rights prepared by the State Department's legal subcommittee was excluded from the preparatory materials. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 112. Likewise, Simpson notes that protection of human rights hardly featured in the early official planning for the establishment of the United Nations. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 221. Mazower also makes clear that, at Dumbarton Oaks, 'human rights were scarcely mentioned.' The priority, first and foremost, was agreement upon the general functioning of the organisation and the extent to which the Great Powers would remain in control of its operations. M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 391. As the Big Three developed their proposals, Moyn notes, 'no diplomat so much as mentioned human rights in the runup to the critical planning meetings that began in late August at . . . Dumbarton Oaks . . .' When the Chinese leaked the principal preparatory documents to the *New York Times*, 'those with eyes to see' understood immediately that the true goal of the prospective United Nations was 'to balance great powers, not to moralize (let alone legalize) the world.' S Moyn *The last utopia: Human rights in history* (2010) 56.

[2773] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 112.

[2774] S Moyn *The last utopia: Human rights in history* (2010) 56.

[2775] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 113.

[2776] *Ibid*.

[2777] As quoted in JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 474 (My emphasis).

[2778] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 392.

[2779] *Ibid*.

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the post-war world.[2780] Civil society looked upon the Dumbarton Oaks proposals as a great betrayal:[2781] 'Dumbarton Hoax?' was one reaction.[2782] Expressing the disgust felt by many critics, WEB Du Bois summarised the message he believed Dumbarton Oaks sent to oppressed nations, races, and minorities: 'The only way to human equality is through the philanthropy of the masters.'[2783]

A 'storm of criticism' also erupted from governments across the world.[2784] When the lesser powers realised the extent of great-power manipulation, and the abandonment of war-time principles, they openly denounced the Dumbarton Oaks proposals.[2785] Even other allies in the British Commonwealth, often blind to human rights abuses within their own countries, voiced objection to what they perceived as the 'elitism and heavy-handedness' of the Dumbarton Oaks proposals.[2786] The Latin American states felt slighted by the United States for their lack of any input in the Dumbarton Oaks discussions, despite

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[2780] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 251.

[2781] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 115.

[2782] M Mazower *Governing the world: The history of an idea* (2012) 209.

[2783] As quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 115. Du Bois also stated: 'Today as we try in anticipation to rebuild the world, the propositions of Dumbarton Oaks center their efforts upon stopping war by force and at the same time, leaving untouched, save by vague implication, the causes of war, especially those causes which lurk in rivalry for power and prestige [and] race dominance . . .' As long as these existed, proclaimed Du Bois, 'there can be neither peace on earth nor goodwill toward men.' As quoted in PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 15.

[2784] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 392.

[2785] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 117.

[2786] PG Lauren *The evolution of international human rights: Visions seen* (2003) 168. 'It aims too low,' Carl Berendsen, New Zealand ambassador in Washington, DC, tersely expressed his criticism. India and other non-European territories protested the complete omission of any reference to self-determination or racial equality. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 117. The Dominions of Australia, Canada, and South Africa - all of whom had contributed significantly to the Allied war effort - expressed dismay over the fact that they and their views had been completely ignored by the Great Powers. PG Lauren *The evolution of international human rights: Visions seen* (2003) 168.

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earlier promises by the United States government to consult its Western hemisphere allies before tabling any proposals for the new world organisation.[2787]

To civil society and the lesser powers it seemed as if the Dumbarton Oaks Proposals left the future of human rights on the doorstep of the United Nations at San Francisco.[2788] However, as exemplified in the case of the Atlantic Charter and Declaration of the United Nations, the rhetorical sponsorship of human rights by powerful states, however half-hearted or even duplicitous, gave new impetus to the 'human rights' idea.[2789] Even the Great Powers had reluctantly come to accept that, during the war years, 'human rights' became a factor which politicians, whether they liked it or not, could not simply ignore.[2790]

By the spring of 1945 it had become clear that the Charter of the United Nations would have to contain some reference to rights. In tandem with the United States, the British Foreign Office also turned its attention to 'this unwelcome subject' to define the desired degree of commitment.[2791] In this regard, Charles Webster, the historian and advisor to the Foreign Office, wrote: 'Our policy is to avoid a "*guarantee* of human rights" though we might not object to a declaration.'[2792]

[2787] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 475; J Morsink T*he Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 2. Complaints among the Latin American nations mounted to such a degree, that these governments called for an extraordinary meeting in order to formulate a collective policy and exert as much pressure as possible by means of a united front. PG Lauren *The evolution of international human rights: Visions seen* (2003) 169. The representatives of 20 nations assembled at the Chapultepec Castle in Mexico City in February 1945 for the inter-American Conference on Problems of War and Peace. Sometimes forgetful of their own less than exemplary records, the Latin American nations devoted much time and attention to the issue of the international protection of human rights, as evidenced by a resolution specifically dealing with this issue. JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 475. See also see J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 17.

[2788] J Blaustein 'Human rights: A challenge to the United Nations and to our generation' in AW Cordier & W Foote (ed) *The quest for peace: The Dag Hammarskjöld memorial lectures* (1965) 328.

[2789] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 95. On the influence of civil society, Normand and Zaidi write: 'The mutual cycle of alternating reinforcement and suspicion between governments and civil society actors would continue to play a major role in shaping the human rights regime over the years.' *Ibid*.

[2790] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 220.

[2791] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 392.

[2792] As quoted in *Ibid*.

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1.6 The human rights idea during the Second World War: An 'empty vessel'?

Normand and Zaidi argue that, double standards notwithstanding, the Atlantic Charter and the United Nations Declaration marked the official entry of human rights *per se* into the international discourse of states.[2793] The United States, closely followed by Great Britain, realised the value of the ideological power of 'human rights' to mobilise support for the war effort.[2794]

However, Moyn argues that the phrase 'human rights' made its 'fateful entry' as mere rhetorical adornment - as a 'politically inspiring phrase,' as a 'war slogan' to justify why the Allies had to be 'now engaged in a common struggle against savage and brutal forces seeking to subjugate the world.'[2795] But,'no one could have said what the slogan implied.'[2796] It remained to be clearly defined.

Some scholars argue that wartime references to human rights in the Four Freedoms and the Atlantic Charter were 'all very vague, deliberately so.'[2797] Moyn holds that, '[h]uman rights entered history as a throwaway line, not a well-considered idea.'[2798] The significance of of Roosevelt's 'nonchalant elevation of the phrase to its wartime career' was chiefly that 'it became an empty vessel that could be filled by a wide variety of different conceptions.'[2799] In the opinion of Simpson, 'the vague generalities with which the

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[2793] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 94.

[2794] *Ibid* 83.

[2795] S Moyn *The last utopia: Human rights in history* (2010) 49. It is Moyn's contention that when 'human rights' entered the English language in the 1940s, it was 'unceremoniously,' even 'accidentally.' Moyn argues that human rights began as a 'subsidiary part of a hopeful alternative vision to set against Hitler's vicious and tyrannical rule.' In the death-grip of the struggle, that vision of a post-war collective life - in which personal freedoms would fit with more widely circulating promises for a form of social democracy - offered the main reason to continue the fight. However, Moyn points out, human rights were only rarely understood as a departure from the 'persistent framework of "nation-states" that would provide that better life.' *Ibid* 44. Borgwardt concedes that it is distinctly possible that the ubiquitous language of the Atlantic Charter regarding human dignity, self-determination, and equal access to trade and raw materials was initially composed for its rhetorical effect. E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 508.

[2796] S Moyn *The last utopia: Human rights in history* (2010) 49.

[2797] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 25. Mazower also points to the fact that the Atlantic Charter was a 'deeply ambiguous document.' Mazower describes the United States' position as an international commitment to dismantle European empires. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 55.

[2798] S Moyn *The last utopia: Human rights in history* (2010) 51.

[2799] *Ibid*.

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politicians expressed themselves had the attraction of avoiding commitments which might be embarrassing later.'[2800]

One of the best illustrations of the vagaries of the phrase 'human rights' during the Second World War is the major Anglo-American colonial controversy over the interpretation of the third principle of the Atlantic Charter:[2801]

> [T]hey respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.

The American anti-colonial tradition[2802] predisposed the Roosevelt administration to favour a broad interpretation of this principle, as applicable to dependent peoples, as well as to states under Axis occupation.[2803] By contrast, for Churchill, at a time of crisis, with the greater part of Europe crushed under the heel of the *Herrenvolk*, and menaced with a new order of serfdom, the Atlantic Charter held out to the remnant of the oppressed nations engaged in the struggle, the hope of a world society based upon economic and political freedom and mutual aid.[2804] Thus, Churchill's Atlantic Charter was intended for Europeans only - an 'inspirational polemic' to raise up the moral of the British and the occupied

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[2800] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 160. As a statement by Deputy Prime Minister Attlee on 5 December 1940 made clear, there was not the least interest in official circles to formulate particularised statements of rights and liberties, let alone to impose such values on other states: 'We believe that we should expand further our political, personal and economic liberties. We cannot lay down the law to the rest of the world . . . we can only say, 'Here is our way of life and the best way we can advocate those principles is by striving more and more to live our principles of freedom and social justice here, and set an example to the rest of the world.' As quoted in *Ibid*.

[2801] As quoted in KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 171.

[2802] During a dinner in 1942, Roosevelt stated to Churchill: 'There are many kinds of Americans, of course, but as a people we're opposed to imperialism - we can't stomach it.' However, as Moyn points out, by the end of his life Roosevelt had come to agree with his ally. S Moyn *The last utopia: Human rights in history* (2010) 88.

[2803] KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 171; N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 19; WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 205. Mazower describes the United States' position as an international commitment to dismantle European empires. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 55. As Louis mentions, this was also the view of an influential segment of the British political left. According to the headline of the *Daily Herald* after an interview with Attlee: 'The Atlantic Charter: IT MEANS DARK RACES AS WELL.' As quoted in WR Louis 'The era of the mandates system and the non-European world' in H Bull & A Watson (eds) *The expansion of international society* (1984) 205.

[2804] N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 20.

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countries of Europe.[2805] As the prime minister was at pains to explain in the House of Commons shortly after the publication of the Atlantic Charter:[2806]

> At the Atlantic meeting, we had in mind, primarily, the restoration of the sovereignty, self-government and national life of the States and nations of Europe now under the Nazi yoke . . . So that is quite a separate problem from the progressive evolution of self-governing institutions in the regions whose peoples owe allegiance to the British Crown.

Despite Churchill's protestations, the Atlantic Charter 'quickly took on a life of its own, unanticipated by those who drafted it.'[2807] It soon became celebrated for a resounding phrase that seemingly described the essential character of the post-war world it envisioned: a peace 'which will afford assurances that all the men in all the lands may live out their lives in freedom from fear and want.'[2808]

[2805] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 532. For Churchill, it applied to the liberation of Hitler's empire, not empire generally, and certainly not his empire. S Moyn *The last utopia: Human rights in history* (2010) 88. Mazower describes Churchill's view as a reaffirmation of the Victorian idea that only Europeans were fir for sovereignty, but others were not. Mazower describes the United States' position as an international commitment to dismantle European empires. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 55.

[2806] Statement by Churchill in the House of Commons 9 September 1941 as quoted in KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 171 - 172; E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 528. Mazower writes that Churchill always repudiated the idea that the Atlantic Charter implied any termination of British Empire (and Roosevelt eventually gave up insisting otherwise). M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 55.

[2807] David Reynolds as cited in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 510. Moyn writes that the eyes of the rest of the world remained fixed on the Atlantic Charter, given its promise of self-determination, even as 'behind the scenes Churchill struggled to convince Roosevelt that his interpretation of this promise as applying only to Hitler's empire, not empire generally, should win out. It became clearer and clearer that 'human rights' would not imply collective self-determination. S Moyn *The last utopia: Human rights in history* (2010) 54. See also Mazower describes the United States' position as an international commitment to dismantle European empires. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 55. According to Mazower, like Wilson's Fourteen Points, the Atlantic Charter was wartime propaganda that acquired a meaning in the colonies that Churchill had not foreseen. *Ibid*.

[2808] Elizabeth Borgwardt contends that the 'radical implications' of this phrase were far from the minds' of the Atlantic Charter's negotiators, and that the specific reference to 'all the men in all the lands' were an eleventh hour addition by the 'arch-imperialist' Churchill, probably for its inspirational or poetic effect. E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 503.

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A young black lawyer in South Africa verily seised upon this construction.[2809] In his autobiography, *Long walk to freedom*, Nelson Mandela chronicles: 'The Atlantic Charter of 1941, signed by Roosevelt and Churchill, reaffirmed faith in the dignity of each human being and propagated a host of democratic principles.'[2810] Mandela continues:[2811]

> Some in the West saw the [Atlantic] Charter as empty promises, but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the Allies against tyranny and oppression, the ANC created its own Charter . . . We hoped that the government and ordinary South Africans would that the principles they were fighting for in Europe were the same ones we were advocating at home.

Needless to say, the Atlantic Charter of Nelson Mandela's aspirations - as expressed in the African National Congress' *Africans' claims in South Africa* - were worlds removed from the Atlantic Charter of Winston Churchill's intentions: Churchill's Atlantic Charter was an 'ephemeral press release intended for European ears only,' whereas Mandela's Atlantic Charter was a 'manifesto of individual dignity.'[2812]

The Atlantic Charter thus provided ideological justification for accusations of hypocrisy by the leaders of the awakening Afro-Asian peoples, whenever the European colonial powers attempted to interpret it as applying only 'to states and nations now under

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[2809] PG Lauren *The evolution of international human rights: Visions seen* (2003) 139. Aborigines in Australia, Indians and Inuits in Canada, blacks in South Africa, and Maori in New Zealand, among many others, wanted to know how the proclaimed principles would apply to them. Would the principles set forth in the Atlantic Charter apply to the domestic laws of racial segregation or immigration restrictions based on race in the United States, Canada, Australia, New Zealand, or South Africa? Would the expressions of the concepts of universalism or self-determination actually extend 'over the four hemispheres of the globe,' and apply to the indigenous populations of the colonial possessions of Great Britain, France, the Netherlands, Portugal, Spain, and the United States? *Ibid*. During the San Francisco Conference, General Carlos Romulo of the Philippines reminded delegates that many races had fought in the Second World War together: 'This is a victory for the whole world, not for one race, one nation, one leader, but for all men. Before this war broke out, I toured the Asiatic territories and I learned from the leaders and from the people of the flame of hope that swept the Far East when the Atlantic Charter was made known to the world. Everywhere these people asked the questions: Is the Atlantic Charter also for the Pacific? Is it for one side of the world, and not for the other? For one race and not for them too?' As quoted in PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 17.

[2810] N Mandela *Long walk to freedom* (1994) 83 - 84. Mandela saw the Charter as a statement of universal principles expounding not only anti-Nazi, but also anti-colonial, aspirations. Mandela's Charter 'envisioned a new conception of international law' that validated the standing of the individual human being separate from the 'intervening level' of the sovereign state. E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 532.

[2811] N Mandela *Long walk to freedom* (1994) 83 - 84. See also M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 56.

[2812] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 34; E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 532, 540.

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the Nazi yoke.'[2813] It was former presidential candidate, Wendell Wilkie's repeated condemnation of colonialism - at Roosevelt's behest - in 1942 that prompted Churchill's most famous endorsement of Britain's empire.[2814] On 10 November 1942, a beleaguered Churchill apparently caused some offence when he stated in a speech at the Lord Mayor's Banquet - directed at Roosevelt:[2815]

> Let me, however, make this clear, in case there should be any mistake in any quarter. We mean to hold our own. I have not become the King's First Minister in order to preside over the liquidation of the British Empire.[2816]

However, notwithstanding the inherent ambiguities, inexact definition, and deliberate obfuscation by political leaders, it is clear that by the end of the war, the phrase 'human rights' had come to symbolise those fundamental freedoms as a 'positive vision'[2817] that

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[2813] KJ Twitchett 'The colonial powers and the United Nations' (1969) 4 *Journal of Contemporary History* 172. Anti-colonialist activists in Africa, Asia and Latin America asserted the 'Mandela interpretation' of the Atlantic Charter with equal fervour. The editor of a West African newspaper, in a sharply worded telegram to Churchill, pointedly asked: 'Are we fighting for security of Europeans to enjoy the four freedoms while West Africa continues on pre-war status? We naturally feel we are entitled to know what we are fighting for, and are anxious to know what our position is to be in the coming new world order.' An Indian nationalist pamphlet published during the war vociferated: 'President Roosevelt, as a co-signatory of the Atlantic Charter, has assumed a real moral responsibility for enforcing a policy which will ensure freedom for all peoples, irrespective of their race, colour and creed. [Otherwise,] the Atlantic Charter will become for hundreds of millions a symbol of hypocrisy.' As quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 532 - 533.

[2814] WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 136.

[2815] As quoted in AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 181. See also PG Lauren *The evolution of international human rights: Visions seen* (2003) 155; WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 136.

[2816] Churchill proclaimed to the American ambassador to China in 1945, 'that never would we yield an inch of the territory that was under the British flag.' As quoted in WF Kimball *The juggler: Franklin Roosevelt as wartime statesman* (1991) 129. When United States Secretary of State, Edward Stettinius, proposed a trusteeship scheme over former colonial territories with United Nations oversight, Churchill's reaction was predictable: 'I absolutely disagree. I will not have one scrap of British territory flung into that area [trusteeships]. After we have done our best to fight in this war and have done no crime to anyone I will have no suggestion that the British Empire is to be put in the dock and examined by everybody to see whether it is up to their standard. No one will induce me as long as I am Prime Ministers to let any representative of Great Britain go to a conference where we will be placed in the dock and asked to justify our right to live in a world we have tried to save.' As quoted in *Ibid* 150 - 151.

[2817] R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 83.

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set the Allies apart from their totalitarian foes.[2818] The political theorist, Hannah Arendt, likewise asserts that:[2819]

> Antisemitism . . . imperialism . . . totalitarianism . . . - one after the other, one more brutally than the other, have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity . . .

With his 'Four Freedoms' speech, Roosevelt desired to articulate 'our alternative to Hitler's new order.'[2820] The president explained in his speech that the 'kind of world' in which the freedoms would be guaranteed, was:[2821]

> [T]he very antithesis of the so-called 'new order' of tyranny which the dictators seek to create with the crash of a bomb. To that new order we oppose the greater conception - the moral order . . . Freedom means the supremacy of human rights everywhere.

In a congratulatory letter to Roosevelt on the achievement of the Atlantic Charter, United States Supreme Court Justice Felix Frankfurter stated:[2822]

[2818] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 541. See also AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 157. Even Moyn points out that by the later 1930s, a dominant understanding began crystallise with regard to the meaning of the phrase 'human rights:' It came to be anti-totalitarian, a meaning codified most clearly by the most prominent world figure ever to use the phrase before Roosevelt, Pope Pius XI, in a reference dating from 1937. A year later, Pius wrote American celebrating the 100th anniversary of the the Catholic University of American that, 'Christian teaching alone gives full meaning to the demands of human rights and liberty because it alone gives worth and dignity to human personality.' By 1941, Anne O'Hare McCormick, a Catholic correspondent on European affairs for the *New York Times*, frequently described Hitler and the Nazis as a threat to human rights. S Moyn *The last utopia: Human rights in history* (2010) 51.

[2819] H Arendt *The origins of totalitarianism* (1975) ix.

[2820] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 21. These regimes (Mussolini's Fascist Party in Italy, the militarists in Japan, and Hitler's Nazism in Germany) outright rejected internationalism, the concept of 'universal laws of humanity,' the League of Nations, gender or racial equality, protection of individual rights. Instead, each of them set out to glorify the nation-state, increase its power over people, cement discipline through submission and blind obedience, secure strength and unity by eliminating differences, gain territory through imperial expansion, and 'literally destroy those at home and abroad who stood in their way.' PG Lauren *The evolution of international human rights: Visions seen* (2003) 126. Hitler described the League as nothing more than a worthless organisation of idealists with 'pious hopes' foolishly and dangerously 'chasing after the phantom.' Concepts of international human rights, the worth of the individual, international care for the persecuted and exploited, universal responsibilities, and racial and gender equality were all 'drivel' to Hitler. These concepts reflected only the inventions of cowards, weaklings, religious bleeding hearts, and fools, 'for Nature does not know them.' Armed struggle alone was the father of all things, wrote Hitler, stating: 'When the nations of this planet fight for existence . . . then all considerations of humanitarianism . . . crumble into nothingness.' *Mein kampf* as quoted in *Ibid* 127

[2821] Roosevelt as quoted in S Moyn *The last utopia: Human rights in history* (2010) 48.

[2822] Frankfurter to Roosevelt 18 August 1941 as quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 554.

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> And you two [Roosevelt and Churchill] in that ocean . . . gave meaning to the conflict between civilization and arrogant, brute challenge; and gave promise more powerful and binding that any formal treaty could, that civilization has brains and resources that tyranny will not be able to overcome.

It would seem that it was in this context that Smuts gave expression to the phrase 'basic human rights' in his initial draft of a preamble to the Charter.

2. Holism and human rights

2.1 A brief exposition of Smuts' 'Idea of the Whole'

It is it impossible to assess Smuts and his legacy to the establishment of international organisation without first appreciating his qualities as a thinker.[2823] As Edgar Bernstein points out:[2824]

> It is part of the paradox of General Smuts that he finds his place in history as a statesman and not as a thinker. For in fact he moved more easily in the world of ideas than he did in the world of affairs. Thought was basic to his being –f more basic, even, than the political action which flowed from it (and sometimes despite of it).

[2823] A study of Smuts' Idea of the Whole, asserts Beukes, will enable us 'to see more clearly his own contribution to the ideas which move the world and also the direction which he pointed for the future.' P Beukes *The holistic Smuts* (1989) 108.

[2824] E Bernstein *The legacy of General Smuts* (1950) 9. 'Though [Smuts] loved power and the game of chess that is politics,' Bernstein continued, 'though it gave him pleasure to check and mate an opponent, and hurt him to be defeated, it was part of the complexity of his character that he loved even more dearly to escape from state affairs into the sanctuary of the mind. He was never more happy than when he was in his study or rambling the veld, engrossed in reading and thinking.' *Ibid*. In a similar vein, Thomas Boydell, Minister of Labour in the Pact government, and a long-time acquaintance of Smuts, said: 'Drawing, as he does, on an intellectual reservoir the depths of which have not been plumbed – because it belongs to the universe of thought – Smuts stands out as a whale among the minnows. It has been said he loves power. He does, but to him power is only a means to an end – a lever to enable him to have his own way.' T Boydell *'My luck's still in': With more spotlights on General Smuts* (1948) 143.

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Smuts' Idea of the Whole[2825] and Holism[2826] occupied a pivotal place in his thinking throughout his long and eventful life.[2827] The conception of the Whole was, Smuts said, 'the companion of his life.'[2828]

The evolution of Smuts' Idea of the Whole' and 'Holism' started in Smuts' student days.[2829] In 1957, in a letter to Canon CE Raven, after having amassed the bulk of the Smuts papers and having completed seven chapters of the biography, Hancock concluded as follows:[2830]

[2825] It would be incorrect to speak of the 'philosophy of Holism' as Smuts never claimed to have formulated a new system of philosophy. SG Millin *General Smuts volume 2* (1936) 398. In fact, Smuts had expressly declared the opposite: 'Holism . . . is not a system of philosophy. I do not very much believe in systems . . . [I]t is most difficult, in matters so complex as life and thought, to take any one concept that might embrace and embrace adequately the whole. Holism – the theory of the whole – tries to emphasise one aspect of thought that has been hitherto a neglected factor.' JC Smuts *Toward a better world* (1944) 125. Smuts maintained that *Holism and evolution* was 'not even a treatise on philosophy, but only an exploration of one idea, an attempt to sketch in large and mostly tentative outline the meaning and the consequence of one particular idea . . .' Quoted in SG Millin *General Smuts volume 2* (1936) 400.

[2826] The activity of the Whole, Smuts declared, expressed itself throughout all space and time in 'the cosmic process of individuation:' that is to say, the continuous creation of 'lesser wholes' in its own image. 'If ever an operative factor deserved a name of its own, this self-developing, self-realising power of the Whole deserves it. Hence I propose for it the name of Holism (from *holos* = Whole) with special reference not only to it as the activity of the Whole, but more especially to its *holizing* or whole-producing tendency . . . Holism then is the ultimate activity which prompts and pulses through all other activities in the universe . . .' Quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 304 (Smuts' emphasis). Succinctly put, Holism is a concept that Smuts 'derived to express three ideas: a definition of the Whole, an agent creating the Whole, a universal principle.' SG Millin *General Smuts volume 2* (1936) 401.

[2827] In the context of the furious pace in which Smuts wrote *Holism and evolution* and sent it off for publication, Hancock states: '[H]e felt unable any longer to keep bottled up in his head the ideas which for so many years past had been exploding there.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 177.

[2828] SG Millin *General Smuts volume 2* (1936) 398. 'When people ask me where and how [Smuts] got his idea of Holism,' wrote Hancock in his Creighton Lecture on the Smuts Papers, 'I can only reply that he grew up with it, he grew into it. The idea of it, or at any rate the feeling for it, is already present in the verses that he wrote for Isie Krige on her seventeenth birthday. And it is interwoven there, as it was in all his later writings, with an intense feeling for the worth of human personality.' WK Hancock *The Smuts papers: The Creighton lecture in history 1955* (1956) 9. Haarhoff also points out that 'Holism – which [Smuts] always pronounced correctly in the Greek way, with a short "o" – has been represented as a philosophic experiment, an episode in Smuts' thought. It was nothing of the kind. It was a life-long pursuit, deeply imbedded in his life and lasting to the end, though subject to modification.' TJ Haarhoff 'The creative spirit of Smuts' in Z Friedlander (ed) *Smuts* (1970) 45.

[2829] In June 1889, when Smuts was nineteen – only six years after he first went to school – he wrote an essay entitled 'Homo sum' that appeared in *Het Zuid Afrikaansch Tydschrift*. In this essay, which dealt with slavery, Smuts held that the Person was the highest manifestation of truth. P Beukes *The holistic Smuts* (1989) 112. Four years later in 1893, Smuts, now a student at Cambridge, wrote his first 'serious legal article,' 'Law – A liberal study,' in which he emphasised the legal basis of the person as the highest fulfilment of human life. *Ibid*. See also WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume I June 1886 – May 1902* (1973) 35. In his Creighton Lectures on the Smuts Papers, Hancock adds that in that same year, Smuts continued these ideas in a long paper 'On the application of some physical concepts to biological phenomena,' a paper which showed Smuts purposefully on the track of his holistic philosophy. WK Hancock *The Smuts papers: The Creighton lecture in history 1955* (1956) 9.

[2830] As quoted in K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 72.

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> I have confirmed my earlier guess about the origins of Holism. It was a feeling before it became a thought,[2831] but it did most explicitly become a thought in the Stellenbosch days. Before he left Cambridge, the main heads of it were all written down, though, of course, the word had not yet been invented. As you must have realized, a passion for synthesis was always with him.

At age 24, 'and as a recreation sandwiched between his law studies,'[2832] Smuts wrote an unpublished thesis on *Walt Whitman: A study in Personality*.[2833] His purpose was not biography or literary criticism, but to study Whitman as an exemplar of personality, and to study personality as an exemplar of 'the whole.'[2834] Whitman expressed the essential concept thus:[2835]

> I will not make poems with reference to parts,
> But I will make poems, songs, thoughts, with reference to Ensemble.

[2831] Hancock traces the beginnings of Smuts' philosophy to his childhood experiences on his father's farm. Smuts had reminisced about the way he would wander around the far in the company of Adam, an old Hottentot servant who enjoyed teaching the young boy about the natural world. Eventually, Smuts gained the confidence to explore for himself. During these self-motivated and self-directed wanderings he became aware that he was 'a small speck in an immense landscape.' In these years, Smuts 'began to feel those perceptions of the natural world and those intimations of his own self which afterwards took shape in his thought, speech, and writing.' He felt inextricably part of the world of plants and animals. However, sometimes 'a different mood swept over him and he felt himself to be Jan Smuts, a separate and lonely being,' who was distinguished from animals, plants, pebbles, and rocks by his use of language and his projection of thought that they we incapable of. Hancock as quoted in *Ibid* 71.

[2832] One of Smuts' professors at Cambridge, FW Maitland, hoped that Smuts would fulfil the destiny that he saw for his protégé in becoming the great theorist of English law. Smuts duly went on to pursue his career at the Middle Temple, but whilst there he immersed himself, not in jurisprudence, but in a study of Walt Whitman. B Schwarz *Memories of empire volume 1: The white man's world* (2011) 309. See also E Bernstein *The legacy of General Smuts* (1950) 10 - 11; P Beukes *The holistic Smuts* (1989) 113; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 289; 48 - 51; SG Millin *General Smuts volume 2* (1936) 397; JC Smuts *Jan Christian Smuts: A biography* (1952) 19.

[2833] Schwarz comments that Whitman 'was not the obvious choice for a young man as devout and rectilinear in ethical matters as Smuts. B Schwarz *Memories of empire volume 1: The white man's world* (2011) 309. Much later Smuts wrote: 'Whitman did a great service to me in making me appreciate the Natural man and freeing me from much ideological or conventional preoccupations due to my very early pious upbringing. It was a sort of liberation, as St Paul was liberated from the Law and its damnations by his Damascus vision. Sin ceased to dominate my view of life, and this was a great release as I was inclined to be severely puritanical in all things.' Smuts to MC Gillett 26 December 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 400

[2834] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 289; SG Millin *General Smuts volume 2* (1936) 397. 'The deeper he delved into Whitman in those months of 1894 and 1895,' writes Hancock, 'the deeper his conviction grew that Whitman and he were kindred spirits . . . And yet the merits that he claimed for his book were not so much literary as philosophical. He explained in his first chapter that he would have been just as ready to write about Goethe as Whitman. For it was not the particular man that mattered to him so much as Man in general; not this or that person, but Personality.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 48 - 49. Millin contends that what moved Smuts to write a book was that he could not find in Plato, Aristotle, Bacon, Hegel, Darwin or the other philosophers he was studying a satisfactory explanation of the universe, 'and he wanted an explanation of his own.' SG Millin *General Smuts volume 2* (1936) 397.

[2835] As quoted in SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 136.

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Smuts reached the conclusion that:[2836]

> [T]he determining force of life, the co-ordinating principle of the universe, was an impulse towards wholeness that manifested itself in each individual by a power of development, growth or evolution from within; and, working in its own environment, for itself. He called his theory 'The Idea of the Whole.'[2837]

'From this time onwards,' states Keith Hancock, 'The Idea of the Whole – [Smuts] wrote it in capitals – took possession of him.'[2838] Smuts' own commitment to a philosophy of evolutionism was constant. In rudimentary form it inspired his examination of Whitman during his Cambridge years. It was also the explicit thesis of Smuts' seminal work in the field of philosophy and science, *Holism and evolution,* which was published in 1926.[2839]

Although Smuts was not the original 'holist,'[2840] his book was significant for its 'systemic rejection,' from both the scientific and philosophical viewpoint, of the Cartesian

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[2836] SG Millin *General Smuts volume 2* (1936) 397 - 398.

[2837] Above all, Whitman represented to Smuts '*the harmony* of evolution - a process in which the cooperative values of civilisation were incubated - as opposed to "the grim scientific conception of Darwin."' Hancock considered the Cambridge period as the one when Smuts broke away from scientific materialist dogmatism. Smuts applied Darwinian evolutionary ideas to the material world and then drew human beings into it as creative, ethical, and political subjects. K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 72. Smuts was arguing by implication that a civilised democracy itself was the product of a long evolutionary process, existing on a higher human scale than other political forms. Whitman revealed to Smuts the 'key postulates of a benign reading of evolution, which lay close to the philosophical precepts of the New Liberalism' and instilled in him the 'sympathy of an ethically grounded libertarianism.' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 309 - 310.

[2838] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 289. In existential terms, upon his return to South Africa from Cambridge, Smuts remained for the rest of his life 'in hot pursuit of the paradox that had puzzled him in his boyhood' of being simultaneously inextricably part of the natural world around him at his father's farm and also a separate individual person. *Ibid* 49. During the First World War, Smuts had carried with him philosophy books for regular study and reflection as he 'struggled as best he could to follow the guiding line of thought which he had discovered during his student days.' *Ibid* 168. *An inquiry into the whole*, Smuts' unpublished 1912 manuscript, indicated that Smuts may have been reflecting on and had been influenced by this 'guiding idea in one shape or another' for approximately 50 years. K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 70.

[2839] The Round Table believed that *Holism and evolution* was a work which no doubt led British scientists a few years later to show their appreciation of his commanding talents by inviting him to preside at the centenary meeting of the British Association for the Advancement of Science. 'Jan Christiaan Smuts: The Roundtable's oldest friend' (1950) 161 *The Round Table* 5. The publication of Holism and evolution in 1926 'attracted the attention of philosophers throughout the world.' *Encyclopaedia Britannica volume 20* (1967) 706.

[2840] Beukes shows how the idea has at various times, and by various writers, including Smuts, been traced back to, among others, Plato, Aristotle, Jesus of Nazareth, St Paul, St Augustine, Shakespeare, Darwin and Alfred Adler. P Beukes *The holistic Smuts* (1989) 99 - 110

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system's 'materialism in science and its dualism in philosophy and religion.'[2841] Smuts' work contained a unified theory of time, space, and matter; of physical appearances and activities; and of mind and personality.[2842] These interdependencies revealed the principle of Holism that underlay the emergence and development of wholes and of synthesis in the universe.[2843]

Darwin's ideas made an indelible impression on Smuts. Smuts accepted the logic of evolutionary theory.[2844] Smuts' 'Idea of the Whole' was an elaboration of one of the factors in organic change and human descent identified by Darwin. For Darwin, internal creative and external factors led to gradual changes in the hereditary structures and functions of organisms.

Smuts, however, placed greater emphasis on the ways in which organisms adapted to, and integrated with, their environment.[2845] Thus, he strove to wrest the concept of evolution away from what he saw as the hard, scientific rendering which Darwin had initiated, in which competition and survival determined human life.[2846]

To accept evolution was to reject mechanical conceptions. Rigid and fixed assumptions denied the plastic and fluid qualities of phenomena in nature. In a mechanical understanding of the universe:[2847]

[2841] K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 69; P Beukes *The holistic Smuts* (1989) 109. Beukes states that Smuts was one of the first modern thinkers to revolt against the 'machine-minded materialistic outlook a well as the necessary dichotomy which arose from it, between matter and soul' of the Cartesian system. P Beukes *The holistic Smuts* (1989) 108. Smuts 'rose above the common prejudices, the narrow biased view, the lopsided outlook of nineteenth-century man . . . his great concept of Holism . . . became the antithesis, the corrective of the hard mechanistic outlook of the nineteenth century which tended to break up life into meaningless parts and compartments . . . he clearly saw the limitations and the danger of the rigid mechanistic outlook of the nineteenth century. It was a remarkable insight for one who was part of that intellectual world.' *Ibid*.

[2842] Even though philosophical and scientific knowledge had greatly increased, Smuts believed that the points of contact between matter, life, and mind were not understood. They were discussed as separate phenomena, although in experience, and within human beings, the three were interrelated.

[2843] The philosophy of Holism dealt with the terrain that lay between science and philosophy. It was not about science or philosophy, as traditionally conceived, but explored areas of connection between the two forms of knowledge.K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 73.

[2844] Evolution was the incremental progress and stratification of wholes, commencing with inorganic beginnings and developing to higher levels of spiritual creation. *Ibid*.

[2845] *Ibid* 74.

[2846] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 321.

[2847] JC Smuts *Holism and evolution* (1926) 3, 4.

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> [l]ife is practically banished from its own domain, and its throne is occupied by a usurper. Biology thus becomes a subject province of physical science – the Kingdom of Beauty, the free artistic plastic Kingdom of the universe, is inappropriately placed under the iron rule of force.

Smuts viewed the new physics of Albert Einstein as key to breaking out of the mechanistic mould. Einstein challenged theories of cause and effect, time and space, with equations that resulted in ideas closer to the creative and dynamic characteristics of nature. His concept of space, time, and relativity replaced the Newtonian mechanical universe by postulating that actual motion in the universe was relative.[2848]

Smuts explained the essence of his concept of the 'Idea of the Whole' thus:[2849]

> Reality is fundamentally holistic, and . . . all patterns of existence in which it finds expression tend to be wholes . . . by a "process of emergence." The new whole incorporates older wholes as material, but is essentially new, and transcends the material of parts on which it is based. The reality is that the new whole thus emerging is not the sum of the parts from which it has emerged . . .

Holism envisaged a fundamentally beneficent universe, in which both biological processes and human organisation are moving toward higher forms and greater unity,[2850] *i.e.*, the whole is always greater than the sum of its parts, everywhere in the universe - among

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[2848] See K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 73.

[2849] From Smuts' preface to the German edition of *Holism and evolution*, April 1938 as quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 161, 164 - 165. In a lecture at the University of the Witwatersrand on 21 September 1927, Smuts describes Holism thus: 'If you take patterns as the ultimate structure of the world, if it is arrangements and not stuff that make up the world, the new concepts leads you to the concept of wholes. Wholes have no stuff; they are arrangements . . . if you adopt the idea of patterns, you get away from substance and get patterns in which truth, goodness, beauty and value become bound up in the nature of things. To be a whole is to be real. To be valuable, to be good – these centre in the idea of being whole.' JC Smuts *Toward a better world* (1944) 129. See also E Bernstein *The legacy of General Smuts* (1950) 11 ('Life functions creatively on a principle of unity which [Smuts] called the Whole; that all living organisations – plants, animals, men, nations, planets and constellations – are wholes; and that each whole thus produced is, in itself, a creative whole, and more than the arithmetical sum of its parts – that is, in fact, a new organisation, produced by the integration of its parts. Thus the universe, [Smuts] argued, is a whole-making universe, flowing ever outward and upward to new creative forms.'); JC Smuts *Jan Christian Smuts: A biography* (1952) 255 ('Holism . . . links the physical and the metaphysical in a doctrine of perfectibility, of progress towards ever greater degrees of perfection, in the course of which fragments coalesce into wholes which are superior to the mere sum total of their constituent parts. It is a message of optimism and elevation.') See also generally P Beukes *The holistic Smuts* (1989) 117 - 118; S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 59; WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 111 - 119; CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 330; SG Millin *General Smuts volume 2* (1936) 397 - 411; JC Smuts *Jan Christian Smuts: A biography* (1952) 254 - 264.

[2850] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 445. *Time* magazine described Smuts' 'Idea of the Whole' as, 'the essence of his life's work and his unshakable optimism: that the whole is always greater than the sum of its parts, everywhere in the universe - among electrons and protons, plants and animals, minds and personalities, conflicts and confusions of men, empires and world orders.' 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36.

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electrons and protons, plants and animals, minds and personalities, conflicts and confusions of men, and empires and world orders.'[2851] In his address at his installation as Rector of St Andrews University on 17 October 1934, Smuts stated:[2852]

> This is a good world . . . the world itself, which is more than its part or individuals, which has a soul, a spirit, a pull, a fundamental relation to each of us deeper than all other relations, is a friendly world.

During a speech in the chapel of his *alma mater*, Christ's College, Cambridge, on 21 October 1934, Smuts said that Holism simply meant that, 'we are not alone, not mere individual atoms by ourselves in this world.'[2853]

In sum, the fundamental precepts of Holism, as expounded by Smuts, were:[2854]

(i) Creative evolution[2855] was the most notable change that science had brought about in our world outlook.[2856]

[2851] *Ibid*.

[2852] JC Smuts *Toward a better world* (1944) 72.

[2853] Unpublished notes of an address by Smuts in the chapel of Christ's College, Cambridge, on Sunday 21 October 1934. A copy is on file with the author.

[2854] There is a difference of opinion amongst Smuts' biographers about the influence of religion in *Holism and evolution*, but this controversy falls outside the scope of this study. One gets the impression that Beukes tries too hard to ground Smuts' philosophy in religion. See for example P Beukes *The holistic Smuts* (1989) 103; 111 ('I am inclined to think that his deep interest in religion with its emphasis on the supreme worth of every person or individual was the first cause of his conception of personality as the most important and highest factor in life.'). On the other hand, Hancock observes: 'To be sure, he was doing his utmost to keep God out of his book . . .' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 194. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 259 - 260.

[2855] 'Smuts saw two main forces operating in all existence, the one growing and developing – evolution – the other binding, forming and formative – Holism – and between the interaction of these two, the patterns of the life are shaped to ever higher forms . . . Holism seems to provide the key to a logical explanation . . . to the riddle of creative growth to ever higher forms.' P Beukes *The holistic Smuts* (1989) 118. Science has shattered the idea that the world was 'ready-made and finished and moving forward as a constant, fixed, rigid entity.' It is instead a growing world, a creative universe, a learning world. The world is in a state of constant flux; there was a constant increase in all directions. JC Smuts *Toward a better world* (1944) 128.

[2856] Beukes explains the interaction between Holism and evolution as follows: 'If we think of evolution as a dynamic growth and variation of patterns, a progressive advance to higher patterns, a new element comes into play, a unifying regulating principle which through inner direction and central control always forms or creates new and higher patterns. This is the element of Holism or whole-making.' P Beukes *The holistic Smuts* (1989) 117 - 118. For a detailed discussion of Holism's interaction with Darwinism, see *Ibid*; 116 - 119; WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 186 - 187; SG Millin *General Smuts volume 2* (1936) 402 - 404.

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(ii) 'It is in the very nature and concept of a whole to be more than the sum of its parts.'[2857] Millin states the idea succinctly: 'The whole is greater than its parts; the whole influences its parts; the parts influence the whole and one another.'[2858] Thus, it is a process of synthesis and not mere aggregation.

(iii) There is a progression of wholes from the 'lowest to the very highest:'[2859] from material bodies through plants and animals to man and to his personality and ultimately to the 'ideals of artistic creations of the spiritual world.'[2860]

(iv) Holism postulates a new model of causation that departs sharply from the 'outmoded concept of causation' inherent in the mechanistic outlook,[2861] leading to another quintessential concept in explaining his Holistic theory – 'Fields of force:'[2862]

> [Every 'thing' has its field . . . every concept has likewise its field. It is in these fields and these fields only that things really happen. It is the intermingling of fields which is creative or causal in nature as well as in life . . . Things, ideas, animals, plants, persons: all these, like physical forces, have their fields, and but for their fields, they would be unintelligible, their activities would be impossible, and their relations barren and sterile.

[2857] *Encyclopaedia Britannica* (1955 ed) 641 as cited in P Beukes *The holistic Smuts* (1989) 118. Smuts formulates the whole as 'the all, but not in an arithmetical sense. We shall not arrive at the whole by adding up all the items of existence. It is not a sum total of Being or Experience. It includes all this but much more, and it is just that more that makes the difference for the conception of the Whole. A mere summation leads to a mere mechanical totality which is no Whole at all.' WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume III June 1910 - November 1918* (1973) 69. Hancock points out that Smuts objected fundamentally to the mechanistic habit of thought – its reductionism and its externality. In trying to understand a machine, one has to examine it part by part, but Smuts did not believe that the universe could be understood in this way: 'You may add up your infinite series as long as you like, and you will never reach the Whole . . . From the Whole you can go down to the parts, from the parts as such you can never rise to the Whole; and if you are in search of the whole truth, it is hopeless to begin with partial truths, however important and useful they may in other respects be.' Quoted in WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 294.

[2858] SG Millin *General Smuts volume 2* (1936) 402.

[2859] JC Smuts *Toward a better world* (1944) 132.

[2860] P Beukes *The holistic Smuts* (1989) 115.

[2861] See generally WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 179; JC Smuts *Jan Christian Smuts: A biography* (1952) 254 - 264. According to the latter, cause and effect were two 'separate, sharply-defined entities confronting each other at a distance,' with the necessary implication that the effect could not contain anything more than the cause. Smuts rejected this view. WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 179.

[2862] JC Smuts *Holism and evolution* (1926) 18. At his lecture at the University of the Witwatersrand in September 1927, Smuts explained how '[e]very whole has its field, and all these fields interpenetrate each other. Thus we have a great community of wholes, each with its own field interpenetrating into the fields of other wholes. I think it is in the intermingling of the fields that the creative element of the universe enters.' JC Smuts *Toward a better world* (1944) 131.

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(v) Holism has enabled man to realise that, instead of the hostility that is felt in life, this is a 'friendly universe,' in which 'organised, tolerant coexistence is the rule, and destructive warfare the exception, resorted to only when the balance of nature is seriously disturbed.'[2863]

2.2 The role of Holism in Smuts' statecraft

A threshold question must be answered: To what extent (if at all) did Smuts' philosophical beliefs influence his statecraft?

Many commentators simply assume that Smuts applied the concept of 'Holism' to the practical aspects of his statecraft.[2864] However, Smuts' principal biographer, Keith Hancock, rejects this ready nexus between Smuts' philosophy and his politics:[2865]

> Philosophy, as Smuts tried to understand and to practice it, gave him firm anchorage. What it could not give him was a ready recipe for politics. It is only in retrospect and by superficial analogy that some people . . . have pretended to discover a precise translation of his political tenets into his political loyalties: the Union of South Africa, the British Commonwealth, the League of Nations, each in turn a bigger and better whole . . .

On the one hand, according to Piet Beukes, there is 'irrefutable proof,' in the form of Smuts' own words, against Hancock's 'outright rejection of the acceptance and application of the holistic principle in Smuts' statecraft.'[2866]

The evidence does suggest that there indeed was a strong link between Holism and Smuts' statecraft, on both the national and international levels. In his lecture at the University of the Witwatersrand on 21 September 1927, Smuts told his audience that when

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[2863] JC Smuts *Holism and evolution* (1926) 220; SG Millin *General Smuts volume 2* (1936) 404. See also JC Smuts *Toward a better world* (1944) 133.

[2864] See, for example, S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 60; CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 330; M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 58.

[2865] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 310.

[2866] P Beukes *The holistic Smuts* (1989) 168. Beukes refers to Smuts' address on 15 May 1917 at a banquet given in his honour by both Houses of Parliament. In this speech – in which Smuts gave conscious form and guidance to his conception of a British Commonwealth, and which definitively set the pattern of the Commonwealth – Smuts stated: 'I would ask you not to forget in these times the British Commonwealth of Nations. Do not forget the larger world which is made up of all the nations that belong to the Empire . . . Your Empire is spread all over the world and you have to keep the whole before you in order to judge fairly and sanely of the factors which affect the whole.' Quoted in *Ibid*. Smuts also declared his conviction that: 'We are a system of States, and not a stationary system, but an dynamic evolving system, always going forward to new destinies . . . You do not want to standardise the nations of the British Empire; you want to develop them towards greater, fuller nationality . . .' Quoted in E Bernstein *The legacy of General Smuts* (1950) 15.

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he returned from Cambridge, he found the situation in South Africa to be a 'problem of holism.'[2867] After the Jameson Raid, fragmentation and divisiveness and racial strife reigned supreme in South Africa, culminating in the Anglo Boer War, which had left South Africa with yet another 'problem in holism:'[2868]

> We were left the fragments out of which we were to make a whole, and it was the problem of South African statesmen to follow up the ideal in the solution of our political problems . . . Gradually we have seen emerging out of these discordant elements the lineaments of a new South Africa. We have not yet the whole, we have not yet a really united South Africa, we have not yet attained to the unity which is our ideal. There is still too much of the old division and separation in our national elements, but still the effort has been made, and you see today in South Africa the biggest problem facing us being solved along holistic lines.

Smuts next turned his attention to 'the greater world outside,' where the same conditions were reproducing themselves.[2869] Although the 19th century had been called the century of nationality, the early 20th century saw the rise of 'intense nationalism, morbid nationalism.'[2870] Nations lost their heads in efforts at self-aggrandisement that had become 'so intense and so selfish that a clash became inevitable.'[2871] The problem, again, was one of Holism:[2872]

> Where there should have been a united family of nations we saw the elements drifting apart, we saw disunity and disruption, and we saw in the end the greatest crash in the history of the world.

After the First World War, Smuts saw the holistic mechanism at work in the formation of the League of Nations:[2873]

[2867] JC Smuts *Toward a better world* (1944) 126.

[2868] *Ibid*; See also JC Smuts *Jan Christian Smuts: A biography* (1952) 259.

[2869] JC Smuts *Toward a better world* (1944) 126 - 127.

[2870] *Ibid* 127.

[2871] *Ibid*.

[2872] *Ibid*.

[2873] *Ibid*. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 256; SG Millin *General Smuts volume 2* (1936) 409 ('The Great War . . . has shown that we are yet far off the attainment of a Holistic universe . . .'). Smuts 'would have preferred the word "society" to "league" as better emphasizing a unity of spirit, but it was nonetheless an application of the holistic principle.' JC Smuts *Jan Christian Smuts: A biography* (1952) 256. 'In the concept of Holism,' writes the son, 'that was at once intellectually satisfying and applicable to world affairs, my father sought a key to the amazing pattern of events around him.' *Ibid*.

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> When the Great War ended there was the same problem in holism. I think the League of Nations is a genuine effort in reconstructing the broken front of European civilisation, of once more reforming unity out of division and discord.[2874]

In addition to Smuts' own words about the influence of Holism on his ideas regarding politics, Smuts' statecraft, in practice, also does seem to reveal a pattern from smaller to larger and to still larger unity.[2875] Noel Garson phrases this phenomenon succinctly:[2876]

> Progression from smaller to greater wholes: one white nation instead of two language sections; a united state instead of divided colonies and republics; membership of self-governing dominions in a single British Commonwealth, and membership of international organisations, in particular the League of Nations, and later the United Nations.[2877]

In a letter to Dr Helmut Minkowski on 8 April 1938, with reference to the preface to the German edition of *Holism and evolution*, Smuts said:[2878]

> In general terms this preface tries to link up the concept of Holism with what is happening in the world to-day and with the great change which is coming over human affairs generally . . . As you know,

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[2874] Lentin points out that there was, however, an unresolved tension in Smuts, between his basic optimism and confidence in an orderly universe reflected in *Holism and evolution*, and his awareness of the 'power of chaos' which he had seen 'at the heart of things' at the Paris Peace Conference. A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 144 - 145.

[2875] P Beukes *The holistic Smuts* (1989) 144. This pattern, in broad strokes, starts with the granting of responsible government to the Transvaal in December 1906. Smuts and Botha then led the drive for the unification of the four provinces. Before and during the National Convention, there was a strong section that favoured a federation over a union.[2875] Smuts pushed for union, pointing out the dangers and impracticality inherent in federalism. In 1917, Smuts urged the conversion of what was then the British Empire into the British Commonwealth of Nations, and he championed the Mandate for Palestine (and the Balfour Declaration that preceded it). The two transcendent wholes that followed, and that exemplified Smuts' stature as an international statesman, was his work with regard to the League of Nations and the United Nations. AC Cilliers draws a distinct parallel between Holism and Smuts' political record, at home and abroad. AC Cilliers *British holism and South African nationalism.* See also E Bernstein *The legacy of General Smuts* (1950) 12 - 17. Bernstein asserts that Smuts saw nations as wholes in an extensive community of wholes. *Ibid*. Likewise, Beukes expounds that Smuts saw six stages in the whole-making process, ranging form the physical and material world, to living bodies like plants, in the animate field as in animals, in the conscious world of man, in human associations like communities and states and finally in the world of ideals and values where truth, beauty and goodness lay the foundation of a new order of the universe.' P Beukes *The holistic Smuts* (1989) 115.

[2876] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 159.

[2877] To Smuts, union of all kinds was simply the principle of his life. He saw the states of South Africa united into a greater South Africa; he saw the greater South Africa united with the other members of the the greatest empire the world had known. There were Afrikaners who came to call Smuts Rhodes Redivivus because of his dream. SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 136. In a eulogy to Smuts shortly after his death, the Round Table also took the view that there can be no doubt that they holistic idea helped Smuts towards his acceptance of, and ultimately his enthusiasm for, the British Commonwealth, shaping his constant aim to look at the problem of the Union of South Africa in the light of a much greater African whole, his desire to make the Protectorates and the Rhodesias part of that whole, and his undeviating support for the League of Nations, and then the United Nations. 'Jan Christiaan Smuts: The Roundtable's oldest friend' (1950) 161 *The Round Table* 9.

[2878] As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 160.

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> Holism with me is not a mere abstract philosophical concept, but an insight that goes to the foundations and I have the faith that it may yet prove of value in the reshaping of our world view in its practical aspects.

However, what complicates the issue significantly is that there are not only parallels between Smuts' activities in the spheres of philosophy and statesmanship, but also stinging paradoxes. Whether it was because 'philosophies are too prone to deal impersonally with men,'[2879] or whether it was simply Smuts' misfortune to have to work on two time scales – as a holist he thought in terms of eternity; as a politician he had to think in terms of the next election[2880] – there were occasions when Smuts failed to harmonise his 'inner life of the spirit' with his 'external life of affairs.'[2881]

Some critics dismissed Smuts' philosophy of holism as mere sanctimony, and it did indeed strike a discordant tone when juxtaposed with Smuts' apparent willingness to readily use violence.[2882] When it came to Smuts' attitude towards the rule of law, even one of the least critical of his biographers, Sarah Gertrude Millin notes that, '[t]here is in Smuts a belief in his own conception of justice which has the power to override even that law that he thinks the basis of every aspect of the universe.'[2883]

[2879] E Bernstein *The legacy of General Smuts* (1950) 12.

[2880] HFF Oppenheimer in the introduction to P Beukes *The holistic Smuts* (1989) 10.

[2881] *Ibid* 26. One author comments: 'In the spirit of Machiavelli, Smuts had occasion to act against charity, against humanity, and against religion, because he was a politician who had to be comfortable with and efficient in the use of power.' K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 86.

[2882] Smuts could be ruthless when he felt the occasion demanded. P Beukes *The holistic Smuts* (1989) 40. Boydell remarks that he 'never saw anyone who could talk so much like the Sermon on the Mount and at times act so much like the chief officer in command of the Nether Regions.' T Boydell *'My luck's still in': With more spotlights on General Smuts* (1948) 160. Roy Campbell, a poet 'temperamentally antipathetical to Smuts, hailed the publication of *Holism and evolution* with four stinging lines.

> The love of Nature burning in his heart.
> Our new St Francis offers us his book.
> The Saint who fed the birds at Bondelswaart
> And fattened up the vultures at Bull Hoek.

Quoted in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 100. With reference to this poem, Dubow states that Campbell 'satirized Smuts' pretensions and reiterated a widely current South African view of Smuts which regarded him as a ruthless leader with blood on his hands.' S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 61. See also P Anker *Imperial ecology: Environmental order in the British Empire 1895 - 1914* (2001) 74.

[2883] SG Millin *General Smuts volume 2* (1936) 218.

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The incidents that demonstrate the seemingly stark contrast between the man who could address world audiences on such themes as 'Democracy' and 'Freedom,' and the impatient autocrat of South African politics include:[2884]

(i) The illegal deportation of white strike leaders in 1914 at Smuts' personal direction.[2885]

(ii) The removal by force by the police of the members of a sect of a black African separatist church called the Israelites, in the Bulhoek area near Queenstown in 1921, resulting in the death or injury of 300 sect members.[2886]

(iii) The attack the following year by the South African Defence Force with airplanes and bombs on the Bondelswartz community in South West Africa - an incident that reverberated in Geneva because the massacre of 115 Africans occurred in a Mandate Territory of the League.[2887]

(iv) The quashing by overwhelming force of the strike of mineworkers in 1922. Smuts called up the Active Citizen Force and declared martial law. He personally took command, and after three days of heavy fighting, including bombing the striker's headquarters in Fordsburg, he suppressed the revolt with heavy casualties on both sides.[2888]

[2884] The instances in which Smuts' 'footsteps dripped with blood,' in the words of his political opponents.' Hancock cites to a *Cape Argus* report of Hertzog's words in Parliament on 13 March 1922: '[E]verywhere General Smuts had indulged in a policy of shooting down. The passive resistance movement was the first occasion. Then came the shooting in 1913, and then the illegal deportations . . . Then the rebellion – shooting down and murder. Then the war, which had distracted the Prime Minister's attention. Then the native trouble at Port Elizabeth – shooting again. Then Bulhoek – shooting again; and then the trouble on the Rand – shooting again. General Hertzog went on to say that the Prime Minister's footsteps dripped with blood – his footsteps would go down in history in that manner.' WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 87 - 88.

[2885] Boydell describes Smuts' actions in his regard as follows: 'The only thing he saw was that by hook or by crook he had to get these men out of the country so that they could cause no more trouble – just a straightforward case of necessity knowing no law.' T Boydell *'My luck's still in': With more spotlights on General Smuts* (1948) 146. See also generally SG Millin *General Smuts volume 1* (1936) 285 - 290; SG Millin *General Smuts volume 2* (1936) 218; WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 368 – 374; JC Smuts *Jan Christian Smuts: A biography* (1952) 118 - 119.

[2886] See generally S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 61; SG Millin *General Smuts volume 2* (1936) 350 - 353; WK Hancock *Smuts: The fields of force* (1968) 89 - 100.

[2887] See generally S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 61; SG Millin *General Smuts volume 2* (1936) 380 – 381; WK Hancock *Smuts: The fields of force* (1968) 100 - 110.

[2888] See generally S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 61; SG Millin *General Smuts volume 2* (1936) 380 – 381; WK Hancock *Smuts: The fields of force* (1968) 62 - 88; JC Smuts *Jan Christian Smuts: A biography* (1952) 227 - 233.

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2.3 'Freedom' and 'Personality'

The concepts of 'freedom' and 'personality' - which are integral to the Idea of the Whole - feature prominently in Smuts' initial draft of the Preamble presented to the British Commonwealth Meeting of Prime Ministers in London in April of 1945:[2889]

> 1. We declare our faith in basic human rights, in the sacredness, essential worth and integrity of the *human personality*, and affirm our resolve to establish and maintain social and legal sanctions for safeguarding the same.
>
> . . .
>
> 3. We believe in the enlargement of *freedom* and the promotion of social progress, and in raising the standards of life, so that there may be freedom of thought and expression and religion, as well as freedom from want and fear for all.

As Dubow points out, the conception of 'personality' (and one could also add the conception of 'freedom') was a key code word in Smuts' 'philosophy of organic holism.'[2890] Bringing the meaning of these concepts to light may help to explain the Smutsian concept of 'human rights.'

[2889] See CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 334 - 335 (My emphasis).

[2890] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 56 - 57.

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2.3.1 Freedom

Smuts' credo of individual freedom[2891] transcended mere political freedom.[2892] So, for example, he valued 'creative freedom,' over political freedom.[2893] Smuts' conception of 'freedom' was also decidedly not a synonym for political or racial equality of all people. In his address at his installation as Rector of St. Andrews University on 17 October 1934, Smuts seemed to limit the concept of 'freedom' to European civilisation, and the 'renascence of the European spirit.'[2894]

> In a speech that dealt with the new tyrannies of Nazism and Fascism:[2895]
>
> Of what we call liberty in its full meaning - freedom of thought, speech, action, and self-expression - there is today less in Europe than there has been during the last 2,000 years . . .
>
> In spite of all our scientific expansion, our essential human rights are contracting . . .
>
> The denial of free human rights must in the long-run lead to cataclysm.

To understand Smuts' complex conception of 'freedom,' it has to be remembered that Smuts was a late Victorian liberal, fully intellectually formed during his student days at

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[2891] Freedom, for Smuts, did not originate in the human will. It 'has its roots deep down in the foundations and constitution of the universe.' Quoted in SG Millin *General Smuts volume 2* (1936) 407. 'The spontaneous self-activity of the organism in the assimilation of the material necessary for its nourishment and development shows that it is free as an organic whole.' Quoted in *Ibid*. Smuts believed that the iron rule of necessity does not bind the universe. In fact, in its very construction there is a 'certain latitude, a certain measure of opportunity,' which Smuts called 'freedom.' JC Smuts *Toward a better world* (1944) 130. 'Holism means not only the development of the universe on holistic lines, the realisation of more perfect wholes, and the assimilation of non-holistic material or relations. It means also the ever-increasing reign of Freedom.' SG Millin *General Smuts volume 2* (1936) 407; See also P Beukes *The holistic Smuts* (1989) 120 - 121.

[2892] '[Smuts saw] freedom not so much in the patriotic sense as a struggle against an outside oppressor, but as an inward movement of the self towards full realization, and in his Holism and Evolution he tended to put freedom on a pedestal as on the of the highest principles and achievements in the process of life.' P Beukes *The holistic Smuts* (1989) 120 - 121.

[2893] 'For even more than political principles and constitutions are at stake. The vision of freedom, of liberation of the human spirit from its primeval bondage is, perhaps, the greatest which has yet dawned on our human horizon. 'In the uncertainties and paralysing perplexities of today, freedom should not merely be our abstract political ideal, but a creative force . . . The inner freedom of harmony of the soul; social freedom and equality before the law as the foundation of the State; international freedom in the rule of peace and justice: these should be the creative ideals of the new age . . . Creative freedom is the watchword for the new order to the realisation of which we should bend our energies.' JC Smuts *Toward a better world* (1944) 80 - 81.

[2894] Smuts referred to 'liberty in its full meaning – freedom of thought, speech, action, self-expression – there is today less in Europe than there has been during the last 2,000 years.' *Ibid* 77. 'We look to our young men and women . . . to band themselves together for the defence of what is most precious in *our* civilisation.' *Ibid* 80 (My emphasis). 'But in the meantime the supreme cause has to be kept going and the be safeguarded till the coming of a new renascence of the European spirit.' *Ibid* 80. 'I have no doubt that that the present disquieting phase will pass and a new renascence of the European spirit will follow.' *Ibid* 81.

[2895] JC Smuts *Toward a better world* (1944) 77, 78.

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Cambridge of the early 1890s. Oxbridge philosophy in this era was dominated by a school of neo-Hegelians under the leadership of TH Green, who believed that the governing elite must transcend self-interest. It must realise itself through moral responsibility to its community, and give leadership in the gradual unfolding of the historical process.[2896]

'Freedom,' for the Anglo-Hegelians, was about creating the capacity for personal self-development, ethical conduct, and a law-governed community, and the forms of those realisations could be culturally various.[2897] This partly explains Smuts' apparent obtuseness about the question of the franchise for Africans in South Africa. Smuts, a 19th century liberal, did not see the franchise as the most central issue politically.

Anglo-Hegelians were elitists: Smuts believed in power in the hands of a small number of talented people.[2898] He did not believe in the vote for Africans. However, his opinion of the political capacity of the white working class on the Rand was little higher.[2899]

This also partly explains why Smuts, together with the United States, the United Kingdom, and the Soviet Union, envisaged that the United Nations would be dominated by the Great Powers and their closet allies. Hyslop observes that this was typical of Smuts' paternalistic understanding of power: great and wise statesmen would guide their weaker brethren.[2900]

2.3.2 Personality

For Smuts, the human personality was the 'highest whole':[2901]

[2896] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 444.

[2897] *Ibid* 445.

[2898] *Ibid*.

[2899] *Ibid*. In fact, in a letter to the Cape politician, JX Merriman in March of 1906, Smuts stated that perhaps at bottom he did not believe in politics at all as a means for the attainment of the highest ends. Smuts to J.X. Merriman 13 March 1906 in WK Hancock & J Van der Poel (eds) *Selections from the Smuts Papers Volume II June 1902 – May 1910* (1973) 169.

[2900] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 457. As stated above, Smuts stated to his friend, the Wall Street banker, Thomas Lamont, that, at the United Nations, [t]here would be a nucleus, and outer circle, and a fringe around that, signifying various grades of responsibility and power. No council of gate-crashers as in the League.' Smuts to TW Lamont 14 August 1942 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 380.

[2901] From Smuts' preface to the German edition of *Holism and evolution*, April 1938 as quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 161, 164 - 165.

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> I place human Personality at the top and as the climax of the progressive series of wholes in the evolution of the present universe . . . the supreme holistic achievement. The ideals which human Personality has evolved as its proper equipment and endowment - the Good, Justice, Right, Freedom, Love, Truth, Beauty - remain the highest lights of the world and of this order of the universe . . . I cannot get away from the conviction - borne in upon me by a lifetime of thought and active participation in world affairs - the way to reform, the way of salvation lies through the fostering, the purification, the enrichment of the human Personality. There the Divine light shines most clearly in this dark world.[2902]

The draft of the Preamble presented by Smuts at San Francisco pledged: 'To re-establish faith in fundamental human rights, in the sanctity and ultimate value of human *personality* . . .' (my emphasis). The phrase 'human personality' became 'human person' in the ultimate document.[2903] Dubow believes that Smuts' use of the word 'personality' was not by happenstance. For Smuts, the word had particular significance as fundamental to his Idea of the Whole.

The scholarly literature reflects varied perspectives with regard to the relation of Smuts' concept of 'Personality' to human rights specifically, and more generally the relation of Smuts 'Idea of the Whole' to human rights.

Dubow states that 'it was through the process of completing the personality that the achievement of freedom depended,' and that this meant that 'human rights, like human personality, were both conditioned and conditional.'[2904] Mazower asserts that Smuts' conception of 'personality' explained his views on racial issues – it made 'differential degrees of freedom and differential treatment of groups by the state not merely reasonable, but necessary for human progress.'[2905]

[2902] '[T]o be a free Personality represents the highest achievement of which human beings are capable . . . and to realise wholeness or freedom (they are correlative expressions), in the smaller whole of individual life, represents not only the highest of which the individual is capable, but expresses also what is at once highest and deepest in the universal movement of Holism.' Quoted in SG Millin *General Smuts volume 2* (1936) 408. Human personality is at the pinnacle of the progressive series of wholes in the evolution of the present universe; human personality is the supreme achievement of life. P Beukes *The holistic Smuts* (1989) 128. Commenting on a review of Bertrand Russell's 'History of philosophy,' Smuts rejected the doctrine which analyses experience into its ultimate elements (sense data): 'Unless the holistic factor is introduced into this analytical situation you are left with the raw crude elements. How can you reverence the human personality – and give it the status which it occupies in the preamble of the Charter – if personality is but sense-data and sensibilia? The thing is really too absurd to be taken seriously.' Smuts to MC Gillett 6 February 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 – October 1950* (1973) 122.

[2903] CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 340 - 341.

[2904] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 58.

[2905] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 64.

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Schwarz likewise points out that evolutionary theory of the type espoused by Smuts could also underpin belief in the different historical stages of distinct civilisations. In turn, it could function as justification for more developed civilisations to defend themselves against incursions from cultures perceived to be less advanced, and thus inferior. Morefield asserts that, in the context of South Africa, Smuts applied his holistic thinking 'only to the unification of its white populations.' He never solved the problem of what to do with black people, who inhabited the same temporal space as the civilized nations of the world, but who could not be assimilated into the evolutionary progress towards wholeness that he believed both naturally and morally necessary.[2906]

Blom-Cooper argues that, as the author of *Holism and evolution*, Smuts would have expected that human rights for all persons would evolve along holistic lines.[2907] Smuts' friend, Theo Haarhof was convinced that the logic of Holism would have led Smuts to still greater levels of humanity, more inclusive and complete.[2908] Heyns, on the other hand, makes the point that:[2909]

> It could perhaps be said that holism is ultimately not particularly well suited as a basis for the protection of human rights; that the preoccupation with the whole can obscure the importance of the parts, which is the very essence of respect for individual rights.

Although in the predominant discourses of social Darwinism of the late 19th century, evolution and race were inextricably linked,[2910] there does not seem to be any conclusive evidence that Smuts' philosophical outlook was either the determinant of, or the key to, his views and policies on racial issues.[2911] Except as one possibly vague influence on him in the intellectual climate of late Victorian Britain, 'the doctrine of Social Darwinism cannot be fastened on Smuts, nor can any advocacy of the eugenics movement.[2912]

[2906] J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014) 183.

[2907] L Blom-Cooper 'Jan Christiaan Smuts (1870 - 1950): Middle Templar extraordinary' (2013) *Advocate* 43.

[2908] TJ Haarhoff *Smuts the humanist* (1970) 60 - 71. See also A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 147.

[2909] CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 347.

[2910] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 321.

[2911] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 159.

[2912] *Ibid* 158.

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As Garson rightly notes, there is nothing in *Holism and evolution*, abstruse and dense as it is, that states anything clearly and explicitly about race. Smuts neither suggested any link between evolution and race, nor did he rank races in a hierarchy.[2913] Smuts did indeed believe in the linkages between all people, and in their common political development as discreet individuals and collectives into parts of a greater whole.[2914] However, as a 19th century liberal and paternalist, he viewed this as a long-term process.[2915] He neither saw the franchise as very important, nor viewed national self-determination as a value that should override other aspirations.[2916]

'Civilisation,' for Smuts, was about wise leadership, order, and gradual social improvement, not about participation.[2917] Schwarz describes Smuts as, among other things, a protagonist of civilisation:[2918]

> [I]n which civic life of any worth was accorded universal reach; in which self-interest always needed to be subsumed to ethical imperatives; and in which the domain of thought and beauty was of deeper value than the exigencies of day-to-day political competition.

Dubow states that, for Smuts, always the spread of western civilisation was the driving logic or spirit;[2919] the notion of civilisation was at the core of his thought.[2920] Smuts was a figure of empire – of the British Empire at the very height of its power. He was born on Queen Victoria's fifty-first birthday, as a British subject. Smuts became politically conscious in the 1890s. This was a time when Western civilisation was held by many to be the highest ideal, and the spread of Western civilisation deemed a sacred duty; when

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[2913] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 159.

[2914] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 459.

[2915] *Ibid*.

[2916] *Ibid*.

[2917] *Ibid*.

[2918] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 307.

[2919] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55.

[2920] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 444.

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'advanced people had the responsibility to look after the more backward.'[2921] Smuts carried the torch of the Enlightenment.

With reference to Western civilisation, Smuts stated:[2922]

> The human spirit having once broken its primeval shackles and emerged from its bondage will never agin submit to them for good. Evolution never reverts back to discarded forms or organs. And the light that has dawned on our human horizon can never permanently set again . . . There may be a temporary eclipse, but never again can there be a return for good to the dark ages of the human spirit. Time has one direction and never moves back.

3. What rights are 'human rights'?

In July of 1947, Smuts corresponded with Chung-Shu Lo, a Confucian philosopher who was consulted by UNESCO with regard to the universality of human rights.[2923] Smuts explained that in *Holism and evolution*, he attempted to explore the concept of the whole, which he considered fundamental for science and philosophy and religion. In addition, Smuts considered that, in the 'organic or rather holistic idea,' the solution of many of the most profound problems of our thought and life might be found.[2924]

[2921] As one example of the civilising mission of imperialism, after the First World War Lionel Curtis stated: 'In tropical Africa . . . the only hope of those races who cannot as yet govern themselves of ever learning to do so is in the tutelage by some great democratic civilised nation.' WR Louis *Ends of British imperialism: The scramble for empire, Suez, and decolonization* (2006) 205 – 225. In Smuts' view South Africa needed to stay within the empire, not only for its own safety but in order to carry out its mission as the bearer of civilisation of the Dark Continent. M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 20. Dubow states: 'Always the spread of western civilization was the driving logic or spirit.' S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 60.

[2922] As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 67.

[2923] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 65.

[2924] Smuts to Chung-Shu Lo 29 July 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 155.

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Smuts found Lo's list of 'rights' less than satisfactory.[2925] Although Smuts agreed with Lo's expression of the right to live, to self-development, and to self-expression, and to enjoyment, the affirmation of these 'rights' did not advance the argument.[2926]

Smuts revealingly stated:[2927]

> I find our modern emphasis on 'rights' somewhat overdone and misleading. It is a modern way of expression, probably owing something to Rousseau and the French Revolution and the American Declaration of Independence. It made people forget that the other and more important side of 'right' is 'duty.'

Indeed, the 'great historic codes of our human advance' emphasised duties, and not rights. The laws of Hammurabi, the Roman Twelve Tables, the Ten Commandments, 'even that highest, noblest code of man,' the Sermon on the Mount of Christ - 'all are silent on rights, all lay stress on duties.'[2928]

Smuts expressed that Lo's 'Chinese wisdom' likely followed 'the same line.'[2929] If the rule to be 'just and honest and kind and merciful and compassionate etc.' were followed, 'all would be well with our human society, and everybody would be able to enjoy all the life,

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[2925] Smuts to Chung-Shu Lo 29 July 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 155. In 'Human rights in the Chinese tradition,' Lo had Lo expounded upon three basic claims, valid for every person in the world, namely: (i) the right to live; (ii) the right to self-expression; and (iii) the right to enjoyment. The right to live included the right to a proper dwelling place, the right to the natural resources of the earth, and the right to have his 'proper share in society as well as to make his proper contribution to it. Lo explained the right to self-expression as a desire 'not only to live, but also to live with a sense of dignity and self-reliance.' Man, as a social being, naturally considers that he has a proper place in society. In order to contribute to society, each individual should have the fullest degree of self-expression. The right of national groups to self-determination is also a form of self-expression. The right to enjoyment involved the 'inner aspect of the life of the individual.' The elementary right to enjoyment is to 'a life free from drudgery; it means that each should have an adequate amount of leisure and also be able to make good use of that leisure.' Other forms of enjoyment are aesthetic, intellectual, cultural, and religious. 'Although not everyone can find enjoyment in the mystical experiences of religion,' the right to enjoyment includes the freedom of religion, but also the concomitant obligation of religious toleration. Lo believed that the three basic claims of human rights set forth above can cover all the fundamental rights that a modern person should enjoy. The right to live is on the biological and economic level. The right to self-expression is on the social and political level. The right to enjoyment is on the aesthetic and spiritual level. When a person can enjoy the rights at all levels, the attainment of a full life is possible. C-S Lo 'Human rights in the Chinese tradition' in UNESCO (ed) *Human rights: comments and interpretations* (1949) 188 - 189.

[2926] Smuts to Chung-Shu Lo 29 July 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 155.

[2927] *Ibid*.

[2928] *Ibid*. With regard to the post-war order, Smuts stated: 'We must *now* do the great thing or face the extinction of freedom as we know it for the modern age . . . a quite telling appeal can be made for a decent right peace which would recognize human solidarity and the duties as well the as the rights it involves.' Smuts to MC Gillett 17 May 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 421 (Smuts' emphasis).

[2929] Smuts to Chung-Shu Lo 29 July 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 155.

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self-development, self-expression and enjoyment 'which is our share in our earthly space.'[2930]

Smuts believed that 'rights' were:[2931]

> [M]uch too individualistic and give no due recognition that organic human and social unity which the duties of the older codes recognized as the real rule and law and pattern of right living.

Smuts continued:[2932]

> I should think the preamble to the Charter fairly expresses the fundamental objective of our advancing human society in their most general form. If we have to be more specific we would stress justice, the rule of law, and the like.

These sentiments elucidate the fact that Smuts was by no means an 'individualist.' His most enduring legacy is, after all, as an 'internationalist.'[2933] The thrust of Smuts' ideas, words, and actions was to secure the freedom of the *world* from Bolshevism, Fascism, and later Communism; he was never much concerned with *individual* rights or *individual* freedom.

Smuts would in all likelihood have agreed with his one-time adversary, Gandhi, in this regard. Kenneth Cmiel notes that many works on human rights in the twenty-first century invoke Mohandas Gandhi as a friend of human rights.[2934] In truth, Gandhi disliked 'rights-talk' of any kind, associating it with the self-indulgence of the modern age. He was inclined to phrase his rhetoric in terms of 'duties,' instead of 'rights,' and generally kept his distance from the human rights campaigns of the 1940s.[2935]

Other than the vague reference to 'justice, the rule of law, and the like' in his correspondence with Chung-Shu Lo, Smuts did not expound upon the specific rights that he would include in an international bill of rights. Dubow points out that, in Smuts' original draft of the Preamble that he presented at the British Commonwealth Meeting in April of

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[2930] *Ibid*.

[2931] *Ibid* 155 - 156.

[2932] *Ibid* 155.

[2933] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 72.

[2934] K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 119

[2935] *Ibid*.

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1945, he espoused 'basic,' rather than 'fundamental' human rights. It would appear that in Smuts' view there was a significant difference.[2936]

Dubow argues that, in Smuts' mind, human rights concerned basic or minimal needs like security and life, and that they pertained to matters such as freedom of expression or religion. But, human rights were not synonymous with equality – whether of a political, social or racial variety. [2937]

Dubow's analysis seems sound. As part of its submissions in defence against the attack of India at the first meeting of the General Assembly in 1946, the South African delegation explicitly argued that human rights had never been internationally agreed-upon. The Charter itself did not define such rights, and only spoke of promoting them.[2938] Therefore: '[t]he only definition of fundamental human rights and freedoms of which the United Nations could at present take cognizance was the four freedoms set out in the Atlantic Charter.'[2939] These freedoms exist in South Africa. Moreover, South Africa had not denied her Indian population such elementary human rights as the right to existence and sustenance, freedom of conscience and speech, and free access to tribunals administering justice.[2940]

Smuts was adamant that political rights were also not fundamental - '[w]hole clauses in the Trusteeship Agreements would have to be struck out on the ground that they were

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[2936] S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55.

[2937] *Ibid* 72.

[2938] Doc A/C 1 & 6 *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 3. See also L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 140.

[2939] Doc A/C 1 & 6 *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 21. Shearer points out that both the United Party and later the National Party administrations in South Africa chose to interpret human rights obligations under the Charter as comprising only the five specific freedoms: personal, religious, speech, the press, and assembly. JB Shearar 'Against the world: South Africa and human rights at the United Nations 1945 - 1961' unpublished LLD thesis, University of South Africa, 2007 322.

[2940] Doc A/C 1 & 6 *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 21.

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discriminatory, if that argument held.'[2941] Nor was it conceivable to Smuts that the framers of the Charter could ever have intended to elevate political equality to the status of a fundamental human right.[2942] 'Such an argument was tantamount to saying that the more progressive races should be retarded by the less progressive, if, in fact they constituted a majority.'[2943] South Africa maintained that, '[e]quality in fundamental rights and freedoms could only be assured in a multi-racial State by a measure of discrimination in non-fundamental rights.'[2944]

4. Human rights as an ideological response to war

It is most likely that the Smutsian concept of human rights grew out of his experience of the horrors of war - the Second World War, the First World War, and 'the most devastating colonial war ever,' the Anglo-Boer War.[2945]

4.1 'A war of the spirit, of man's soul'

Smuts' mystical vision did not see war as merely one between visible bodies of men and institutions, but as an invisible, unbending, and unflagging struggle within the minds of men.[2946] For example, with regard to the First World War, Smuts stated: 'It has not turned out to be a military war; it has been a war not of armies, not of nations, but a war of . . ideals, a war of the souls of the people . . .'[2947]

[2941] Doc A/C 1 & 6 of *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 3 - 4, 20 - 21, 44. Compare Mrs Pandit: 'There could be no question of "fundamental" and "non-fundamental" freedoms; freedom was indivisible, and should be enjoyed by all peoples, whatever their colour.' *Ibid* 45.

[2942] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 469.

[2943] Doc A/C 1 & 6 *United Nations official records of the second part of the first session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30 November 1946* 21.

[2944] *Ibid*.

[2945] M Koskenniemi *The gentle civilzer of nations: The rise and fall of international law 1870 - 1960* (2001) 120. It should be borne in mind that by the time Smuts used the phrase 'human rights,' he had been integrally involved in, and had helped to end, three of the most devastating military conflicts in human history. Smuts experienced first hand human suffering on a scale almost unimaginable to anyone living in a developed country today. Upon his arrival in San Francisco Smuts had told reporters: 'Our race has reached the limit of human endurance . . .' Quoted in CH Heyns The Preamble of the United Nations Charter: The contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 337.

[2946] K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 79.

[2947] JC Smuts *Message to South Wales: Speech delivered at Tonypandy, Rhondda* (29 October 1917) 3

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One of the enduring images of Smuts from the Anglo Boer War is how he retrieved a copy of Immanuel Kant's *Critique of pure reason* form the ruins of a burnt-out farmhouse, and kept it in his saddlebag during the course of the war, together with, at various times, Cicero, an English Bible, a volume of Schiller, and a Greek New Testament.[2948] During the First World War, Smuts had also carried with him philosophy books for regular study and reflection as he 'struggled as best he could to follow the guiding line of thought which he had discovered during his student days.'[2949] During the Second World War, his Greek New Testament was always by his bedside.[2950]

One of the themes running through Smuts' justification for his participation in these armed conflicts, was Western civilisation's resistance to militarism, epitomised by German aggression - as 'Prussianism' during the First World War, and "Nazism' during the Second World War.

On 29 October 1917, Smuts stated:

> This is a war between ultimate principles, Now has to be decided whether we will live free lives, or whether we will be dragooned on the principles of the drill sergeant, on the principles of militarism and on the principles of tyrannous Governments.

Smuts expressed this in philosophical terms, as the opposition between the will to power advanced by Nietzsche,[2951] in favour of the Kantian approach that rejected the use of individuals merely as a means to an end:[2952]

> You want the human individual not to be merely a means to an end, you do not want the human individual to be exploited, you do not want individuals for self-aggrandisement, but you want them to develop and reach the highest that they are capable of reaching. That you can only attain by relying on the principle of liberty.

Smuts viewed the First World War as:[2953]

[2948] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 30; A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 14.

[2949] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 168.

[2950] See, for example, Smuts to MC Gillett 14 May 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 429.

[2951] '[T]he German principle [is] not liberty, not freedom, not righteousness. The will to power is the ideal that dominates the German system . . .' JC Smuts *Message to South Wales: Speech delivered at Tonypandy, Rhondda* (29 October 1917) 5.

[2952] *Ibid* 4.

[2953] *Ibid* 14.

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> [A] spiritual war . . . a moral crusade . . . the war which began as a great military war is now a great moral and spiritual crusade, and the nation strongest in the military sense is the weakest of all because she has the least moral stock.[2954]

Similarly, from the the outset of the Second World War, Smuts was confident that the Allies would prevail. He looks upon the struggle as a 'crusade of the spirit' in defence of Christian civilisation.[2955] Nazism, Fascism, and Bolshevism were not mere political movements, Smuts argued, but 'new religions . . . and . . . mere political methods of coping with them are quite inadequate.'[2956] 'This war, which began as Hitler's war, may end as God's war, the war for the greatest cause of the human race.'[2957]

South Africa was in the war because 'the vital issues of our Christian civilization' were at stake.[2958] Moreover, for South Africa to dissociate herself from Great Britain and the rest of the Commonwealth in this matter would be 'cowardice and betrayal of the causes which are basic to our existence.'[2959] Whatever may have been the case for other wars, this was a 'war of religion, a war of fundamentals of our human outlook and future.'[2960]

In his address to both Houses of Parliament on 21 October 1942, Smuts stated:[2961]

[2954] 'I look upon this war as a moral crusade . . . the war which began as a great military war is now a great moral and spiritual crusade, and the nation strongest in the military sense is the weakest of all because she has the least moral stock.' *Ibid*.

[2955] J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 188.

[2956] Smuts to TW Lamont 4 January 1945 in *Ibid* 520. The crucial question was: 'What is *our* religion to counter these counterfeits of religion?' 'We are drifting on the tides,' Smuts wrote, with no compass except the old liberal human ideas which have so far guided our human advance.' *Ibid*.

[2957] Smuts to MC Gillett 14 June 1940 in *Ibid* 234.

[2958] Smuts to MC Gillett 12 May 1940 in *Ibid* 222.

[2959] *Ibid*. Smuts 'deeply regretted' that, in justifying his government's decision to declare war on Germany, he had to rely so much on the 'argument of self-interests: on the threat to South West Africa, on the gold mines as bait for Germany. The real argument was of course the moral argument. *Ibid*.

[2960] *Ibid*. 'Shall we never learn our lesson?' Smut wrote to Thomas Lamont on 6 September 1939, 'There is no solution through war.' This war would be followed by another peace, which may be no peace. For, after a devastating conflict there is 'no mood for a real and wise peace, as you and I found out at Paris in 1919.' Meanwhile 'civilization is falling back and the light of the spirit is being dimmed.' Smuts hoped for the best and prayed that 'Human Personality may triumph against the overwhelming forces threatening to submerge it.' Smuts to TW Lamont 6 September 1939 in *Ibid* 190. In a letter to Margaret Gillett on 2 November 1945, Smuts returned to this theme. He lamented that the 'steam was not in the engine' of the efforts to secure world peace, 'however well-devised and constructed . . .' The crux of the problem was how to 'mobilize that inner subtle spirit, that Holy Spirit, which lies within all great causes.' Jesus could do it, Paul in large measure did it, and even Hitler - in the base, degraded way of the Pied Piper leading his people to utter destruction - could do it. It was largely a problem of human personality, Smuts explained, 'but few have that supreme gift of genius or personality which works miracles.' Smuts to MC Gillett 2 November 1945 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 19.

[2961] JC Smuts *Toward a better world* (1944) 252.

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> [W]hat will it profit a nation if it wins the world and loses its soul? . . . I speak . . . of that inward glory, that splendour of the spirit, which has shone over this land from the soul of its people, and has been a beacon of light to the oppressed and downtrodden peoples on this new martyrdom of man.[2962]

'This at bottom is a war of the spirit, of man's soul,'[2963] Smuts stated, '. . . [a]t bottom therefore this war is a new Crusade, a new fight to the death for man's rights and liberties, and for the personal ideals of man's ethical and spiritual life.'[2964]

During his address to the 6th Plenary Session of the San Francisco Conference on 1 May 1945, Smuts again reiterated that:[2965]

> This war has not been an ordinary war of the old type. It has been a war of ideologies, of conflicting philosophies of life and conflicting faiths. In the deepest sense it has been a war of religion perhaps more so than any other war of history . . . [T]his was not a mere brute struggle of force between the nations but for us, behind the mortal struggle, was the moral struggle, the vision of the ideal . . .

The Nazi threat had touched the 'bedrock of human advance,' and 'something very deep and far-reaching' indeed would have to be attempted to deal with the 'evils now emerging on our path.'[2966] 'The situation is at bottom a religious problem,' Smuts reiterated, 'down to our fundamental way of life.'[2967]

[2962] 'The right of freedom which has guided our slow and faltering advance through the ages still shines in the night which has overtaken us.' *Ibid* 254.

[2963] JC Smuts *Toward a better world* (1944) 260.

[2964] *Ibid* 262. Behind all the issues of war lay the fundamental question posed to the world: 'Which do you choose - the free spirit of man and the moral idealism which has shaped the values and ideas of our civilisation, or this horrid substitute, this could obsession now resuscitated from the under-world of the past?' *Ibid*. In a broadcast on 12 May 1941, Smuts stated: 'The world after a Hitler victory . . . would be a world more savage than any written of the darkest pages of our human history. It would be the horror of history . . . I could understand Prussianism or a soldier's world. But a gangster world such as Nazism, in which one sees the resurgence of all the most hateful elements in poor human nature; in which not only every essential Christian principle, but the finer and nobler human instincts, are trampled upon, and man reverts to the brute - such a world is an insult . . . to our ethical feeling . . . It is in conflict with the principles on which this universe is founded.' *Ibid* 242. 'I must frankly confess my prophetic soul does not see and cannot face such a world in the future of man whatever vicissitudes many still lie before us.' *Ibid* 243.

[2965] 'Address by Field Marshal Jan Christian Smuts, prime minister of the Union of South Africa and chairman of the South African delegation at the sixth plenary session of the Conference' (1 May 1945) No 34 3 in *United Nations Archive* S0596/Box 7/File 13.

[2966] Smuts to MC Gillett 4 July 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 439.

[2967] He did not believe that ordinary methods of political action could be usefully applied in such a case that called for religious reformation in the human spirit: 'No voice divine is heard in our day; only the political pundits are left us, and what poor folk they are, with what poor instruments . . . for such a situation as Nazi Germany! Still we should not despair even here, and have faith in that good which in the end, in the far off end perhaps, overcometh evil.' *Ibid*.

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4.2 Human rights as a reaction to Nazi atrocities

There is some controversy in the scholarly literature over whether the renewed focus on human rights at San Francisco could be explained as a reaction to the atrocities of the Second World War.[2968]

JH Burgers does not doubt that there is *some* connection between the horrors perpetrated by the Nazis during the war and the renewed emphasis on human rights at the San Francisco Conference, but, this can be only a partial explanation.[2969] Burgers concludes that all the decisive steps toward strengthening the Charter provisions with regard to human rights, were taken before the capitulation of the German forces.[2970] Mazower likewise states that 'we now know that the Holocaust as such was much less central to perceptions of what the war had been about in 1945 than it is today.'[2971]

Most scholars, however, subscribe to the view that what lay behind the enthusiasm for human rights at the San Francisco Conference were the knowledge of the atrocities committed during the war, and hence the political necessity of embodying suitable

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[2968] JH Burgers 'The road to San Fransisco: The revival of the human rights idea in the twentieth century' (1992) 14 *Human Rights Quarterly* 448.

[2969] Initially Burgers had believed that the renewed interest to the old idea of human rights developed as a reaction against the practices of the totalitarian régimes that had come to power. The 'idea received a tremendous stimulant after the collapse of the Third Reich, when the full scale of the horrors perpetrated by the Nazis came to light.' In the course of May 1945, many reports were published in the media about what Allied forces had found in the liberated concentration camps. In particular, photographs of piles of emaciated corpses in Bergen-Belsen made a devastating impression. *Ibid* 475.

[2970] Burgers credits two groups of actors for the improvement of human rights clauses in the Charter: The Latin-American states (with the exception of Argentina) that held a conference on war and peace problems in Chapultepec, Mexico, from 21 February to 8 March 1945; and non-governmental organisations in the United States. *Ibid*.

[2971] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 381. In further support of this argument, see also K Sellars *The rise and rise of human rights* (2002) ix.

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language in the Charter of the new international organisation.[2972] After all, '[w]ar,' as Thucydides famously said, 'is a forcible teacher.'[2973]

The argument of Burgers and Mazower is unsustainable. It assumes that the knowledge of the full horror of the Final Solution came to the attention of the San Francisco delegates - in most cases high ranking officials in their respective countries' foreign relations and military establishments - only after Germany surrendered on 8 May 1945. Even accepting, *arguendo*, the proposition that no intelligence reports about the Nazi extermination camps reached the United Nations prior to Germany's capitulation, many of the camps were liberated by United Nations forces before Germany's surrender.

On 11 April 1945, some two weeks prior to the opening of the San Francisco Conference, the British 11th Armoured Division had uncovered the death camp at Belsen. Within the camp, more than 60 000 inmates were suffering from disease, malnourishment, and appalling mistreatment. A further 100 000 corpses of murdered victims lay about the camp and in open pits.[2974] By the time of the liberation of Belsen, information had also

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[2972] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 264. Jones notes that the experiences of the Second World War had enabled what one scholar, in a different context, had termed a 'Grotian moment.' That is to say, it was a time when old ways of thought and old institutional arrangements were so obviously inadequate - as they had been in Grotius' time - that something different was required. For the delegates gathered in San Francisco, theirs was not the hopeful world of 1919, but the broken world of 1945. DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 213. Krasno writes that in 1945, when the United Nations was founded, nations were emerging from a second world war. Millions had been killed and maimed and much of Europe lay in rubble. The truth of the horrific genocide perpetrated against the Jews and other groups in Europe by the Nazis were coming to light. The global community that gathered in San Francisco to work on the Charter and to observe and influence the proceedings, had been deeply troubled by emerging evidence of the Holocaust and the contempt for human rights demonstrated by the Nazi regime. J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 3, 33. Kunz recognises that the experience of two world wars, the rise of totalitarian régimes, and the unspeakable cruelties of the National Socialist dictatorship have rendered the endeavours to protect the individual against tyranny more urgent. During the Second World War proposals were made with regard to individual rights, and, '[i]t was only natural that this problem should be taken up by international organizations.' J Kunz 'The United Nations Declaration of Human Rights' (1949) 43 *American Journal of International Law* 317. In the Declaration of the United Nations of 1 January 1942, the signatories had recognised that victory in the war against the Axis powers was necessary to 'defend life, liberty, independence and religious freedom, and to preserve human rights and justice int heir own lands as well as in other lands.' To many this represented the essence of the way of life which the United Nations have been engaged in defending against Axis aggression. LM Goodrich & E Hambro *Charter of the United Nations: Commentary and documents* (1946) 56. Lauren notes that, as the war expanded and the evidence of wartime brutality and genocide mounted, international discussions about human rights increased in frequency and intensity: 'Individual citizens, private groups, nongovernmental organizations, officials within bureaucracies, diplomats, foreign ministers, and heads of state increasingly lobbied for an international response.' PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 5.

[2973] As quoted in N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 16.

[2974] M Jones *After Hilter: The last days of the Second World War in Europe* (2015) 67.

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become available about the concentration camps liberated by the Red Army in Poland - at Majdanek in July of 1944, and Auschwitz in January of 1945.[2975]

Lawrence Finkelstein states: 'The San Francisco stage had World War II as its backdrop.'[2976] He continues:[2977]

> The conference was convened as an act of faith in the future and of remorse for the past even as the allied armies were driving through a bleeding and prostrate Germany to their fateful meeting in the heart of Europe.

In fact, on 25 April 1945 - the day on which the San Francisco Conference convened - the United States troops of the First Army and the vanguard of the First Ukrainian Army Group met on the Elbe.[2978] Germany surrendered on 8 May.[2979]

The Conference was in a very real sense dominated by the war then in progress, the events that led to that war, and the hope that that war would not recur.[2980] Alger Hiss, the acting Secretary-General of the United Nations during the San Francisco Conference stated: '[T]here was almost a physical revulsion at the destructiveness of the war, at the horrors. We wanted to think that mankind just wouldn't permit this to happen again.'[2981] The participants at San Francisco were, after all, mostly the same states which had participated in the war effort of the United Nations and had acceded to the Declaration of the United Nations of 1 January 1942.[2982]

However, in the final analysis, the goal is to determine (i) what Smuts - as the person who actually wrote the phrase 'human rights' into the Preamble to the Charter - knew of Nazi atrocities; and (ii) whether that knowledge had any impact on the meaning that Smuts imbued to that phrase.

[2975] *Ibid.*

[2976] LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 369.

[2977] *Ibid*.

[2978] *Ibid*. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 383.

[2979] The victorious end of the war in the Pacific, although already assured, did not come until months later, on 14 August.

[2980] LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 369.

[2981] Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 43.

[2982] LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 369.

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Smuts was concerned over the threat that Hitler posed to the European and international balance of power. He was deeply troubled by the destruction of democratic rights and liberties, associated in his mind with the rule of law and British parliamentary institutions.[2983]

Smuts was repulsed by Hitler's crudity and the vulgarity of the Nazis.[2984] He described Hitler as 'the Devil . . . let loose among mankind . . . a scourge of God, like Attila the Hun.'[2985] Civilisation, Smuts believed would 'stand the scourge and emerge . . stricken, but not . . . beaten.' Civilisation could not go under, and the world could not revert to the 'brutality and bestiality that have disgraced Nazi Germany.' The reason for the perseverance of civilisation was that there were 'certain fundamental ideals of life' which have emerged and could not 'go under again.'[2986]

Nazism, in following the creed of Nietzsche and others, exalted the minority over the rest of the people, and race over race, thus destroying the 'very soul of our civilization.'[2987] 'On the Nazi foundation,' Smuts declared, 'neither what we mean by religion nor what we have learnt to be ethical conduct could endure.'[2988] Nazism was a 'plain contradiction of all that.'[2989]

Nazism was '[e]vil enthroned and worshipped, and what we have considered good is spurned and suppressed.'[2990] Should Hitler prevail, 'the currents of the future will be turned into strange new channels which will carry us far away from the civilisation we have

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[2983] K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 83.

[2984] 'We know beyond all doubt what Hitler's New Order means. Persecution, domination, suppression, enslavement of the free spirit of man, aye, extermination . . .' JC Smuts *Toward a better world* (1944) 260.

[2985] Smuts to Lord Brand 13 November 1939 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 199. Elsewhere, Smuts wrote: 'If ever there is devil's work in this world, Hitler is doing it. He will smash our civilization in addition to the political organization of Europe. And a mere barbarian! If he had been a Napoleon one might have doubts, but Hitler is a mere barbarian of the spirit for whom I have no time.' Smuts to LS Amery 19 June 1940 in *Ibid* 237. And, on another occasion, Smuts said: 'I liked Churchill's description of Hitler as a product of the wrongs and shames of the past. That's exactly what he is - the offspring of our and his peoples' sins . . .' Smuts to MC Gillett 8 September 1940 in *Ibid* 251. In July 1944, Smuts wrote that, '[f]rom the Hilters and the Himmlers with their blood-stained hands and blackened souls anything may be expected.' Smuts to MC Gillett 26 July 1944 in *Ibid* 486.

[2986] Smuts to Lord Brand 13 November 1939 in *Ibid* 199.

[2987] Smuts to MC Gillett 12 May 1940 in *Ibid* 223.

[2988] *Ibid*.

[2989] *Ibid*.

[2990] *Ibid*. At that time, Smuts did not take the same 'grave view' of Bolshevism, because it was never cleared to him that Bolshevism, despite its brutalities and cruelties, 'really threatened the essentials of our ethical civilization.' *Ibid*.

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known.'[2991] If he was beaten - 'and God give he will be' - some 'new reconstruction of the spiritual foundations of the past could be attempted and the continuity of our civilization could be secured . . .'[2992]

On 21 June 1940, in a radio address to the people of the United Kingdom and the United States, Smuts stated:[2993]

> From this distance, I speak to you about the war, a war of freedom if ever there was one, a war in which the fundamental question is whether freedom shall prevail or perish from the face of the earth before the most gigantic and diabolic onslaught that has ever been made against it.

With reference to the peace he 'envisage[d] and hope[d]' to see established after this 'titanic struggle,' Smuts declared: 'Our vision is still freedom, the liberation of Europe from the deadly Nazi thrall and its organization in a new creative freedom.'[2994] 'We envisage,' Smuts said:[2995]

> [A] free Europe, free for the individual and for the nations, free in the sense of giving full scope for personal and national self-development and self-perfection, each according to his own individual lines. In that fundamental sense we continue on the historic trail of human progress

There can be no doubt that Smuts was fully aware of the consequences of the Nazi scourge across Europe. As early as March of 1938, Smuts said:[2996]

> I have always thought that the Anschluss was coming, but never imagined that it would be accomplished in the way it was done, in violation of solemn treaties and undertakings, and with a display of brute force which amounted simply to the rape of Austria. What is passing there at present seems to be largely a veiled mystery, but it must in any case be a horrible business for Jews and Independents and intellectuals generally.

[2991] Smuts to MC Gillett 28 May 1940 in *Ibid* 229.

[2992] *Ibid*. Following the peace overtures by Hitler to Great Britain in address to the Reichstag on 19 July 1940, Smuts stated: 'A Nazi-dominated Empire is a black prospect, an if we agreed to it, we would be accused of betraying Europe and indeed Western civilization itself.' Early in 1941, Smuts wrote that a stalemate in the war would be 'a disaster,' as it would mean the imprisonment of the human spirit 'in a blackout of barbarism.' In April 1942, Smuts said to a friend: 'One would rather be dead than live as a slave in a Nazi world.' Smuts to MC Gillett 12 April 1942 in *Ibid* 360. On 7 May 1943, in a telegram to Roosevelt to congratulate him on the victory of the American forces in the capture of Bizerta, Smuts stated: 'This feat of arms will prove historic. From now on the Allied tide of victory will roll on until it covers and refertilizes our fair world and saves it from the new barbarism.' Smuts to FD Roosevelt 7 May 1943 in *Ibid* 427.

[2993] (Speech 1940) as reprinted in *Ibid* 244.

[2994] *Ibid* 246.

[2995] *Ibid* 247. On 22 July 1940, Churchill sent Smuts a telegram of thanks for Smuts' 'splendid and inspiring broadcast.' WS Churchill to Smuts in *Ibid* 248.

[2996] As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 124.

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And, again on 29 June 1938, Smuts stated: 'The plight of Jewry in Central and Eastern Europe is terrible in the extreme and one finds it difficult to express in words what one feels in this connection.'[2997]

During his address to both Houses of Parliament on 21 October 1942, Smuts stated:[2998]

> The sufferings [Hitler] has inflicted on Jews and Christians alike, the tide of horrors launched under his Gestapo regime over the fair West, constitute the darkest page of modern history. He has outraged and insulted and challenged the very spirit of humanity and tried to found a new barbarism.

On 19 October 1943, in a speech at the Guildhall, London, Smuts described the horror of Nazi tyranny:[2999]

> For carrying on his war Hitler is draining occupied Europe of all its resources of food, materials, and manpower.[3000] Everywhere the enslaved populations are being reduced to destitution and despair with the most brutal ruthlessness . . . They are moved about like dumb cattle, far away from home and friends, shot on the least show of resistance, shot as hostages even without the allegation of guilt, while the Jews and Poles and other sections of the population are being systematically exterminated . . .
>
> The moral and physical sufferings of the victim peoples surpass all limits of human nature and of past experience even in this most barbarous times. Even the reading of authentic accounts of these outrages is more than ordinary human feeling can bear. A new darkness of ruthless, monstrous inhumanity, unilluminated by the mercy of Christ, covers the face of Nazi Europe in this twentieth century.'

According to the journalist, David Friedmann, on the afternoon of 3 May 1945 - the day Smuts submitted to the San Francisco Conference the South African proposal for the Preamble containing the phrase 'fundamental human rights' - Smuts explained what he meant with the phrase.[3001]

According to Friedmann, Smuts said that he was in possession of detailed and confirmed accounts of the appalling atrocities committed at Auschwitz, Bergen-Belsen, Treblinka, Dachau and other Nazi camps. He also had full reports of the gross violations

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[2997] As quoted in *Ibid* 128.

[2998] JC Smuts *Toward a better world* (1944) 261.

[2999] *Ibid* 301, 305.

[3000] *Ibid* 301.

[3001] The *Friedmann Papers*; see note 218 above.

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of the Geneva Convention governing the treatment of prisoners of war, who were forced into slave labour, starved to death, and shot out of hand.

It is clear that, for Smuts, the Nazi challenge to human dignity had brought the question of human rights down from the plane of philosophical speculation to that of life and death - life in freedom, or death in gas chambers.[3002]

Smuts stated that it was in the context of these crimes, that he wanted the United Nations, to 're-establish faith in fundamental human rights.'[3003] The second paragraph of his draft preamble containing this phrase had to be read in conjunction with the preceding paragraph, which stated 'to prevent a recurrence of the fratricidal strife which twice in our generation has brought untold sorrow and loss upon mankind.'

At no time, states Friedmann, did Smuts speak of 'civil and human rights as they became known in later years with the independence of African and Asian colonies.'[3004] Friedmann maintains that the delegations from the other countries - especially Great Britain, France, Belgium, and Portugal, with their colonial empires, the United States with its system of entrenched racial segregation in the South, Australia with its discriminatory policies against Aborigines, and Saudi Arabia with its feudal system - were fully aware of the meaning with which Smuts had imbued the phrase 'fundamental human rights.' Otherwise, they would not have voted in favour of it.[3005]

The day after the South African delegation submitted Smuts' draft preamble to the Secretariat of the San Francisco Conference, Friedmann accompanied Smuts to the University of California to receive an honorary doctorate. In his address, Smuts expounded upon 'the destruction of fundamental human rights' by 'Hitler's Germany and Tojo's Japan':[3006]

[3002] CW Jenks *The world beyond the Charter in historical perspective: A tentative synthesis of four stages of world organization* (1969) 103.

[3003] The *Friedmann Papers*; see note 218 above.

[3004] *Ibid*.

[3005] Friedmann also includes the totalitarian regimes of the Soviet Union and its satellites, as well as India with its one hundred million 'untouchables' under the caste system, but these member states were even more reluctant to openly admit potential 'human rights' violations in their domestic spheres. These were also the states which would lead the hue and cry again South Africa at the first meeting of the General Assembly the following year.

[3006] *Ibid*.

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> Hitler . . . has trampled on the rights of smaller nations regardless of law and treaties and moral considerations. It has through the police state and its Gestapo built the Buchenwald, Belsen, Dachau and other concentration camps with all the sadistic horrors which our victory is now revealing and much more which may never be revealed . . . the skeletons and wrecks of the concentration camps are the answer to this libel on human nature.

Smuts provided further confirmation on his conception of 'fundamental human rights' in a briefing to the heads of the delegations on 7 May 1945.[3007] Smuts declared that the intention of the Preamble was to give the spiritual background, 'the human background of this vast struggle through which we have gone and from which, thank God, we have successfully emerged.' Continuing, Smuts stated:[3008]

> I think we should say at the very forefront of this document that this was a . . . struggle for the human person, for the soul of man, for the fundamental rights which are basic to *our civilisation*. That is what this preamble purports to do . . . It states the fundamental objectives for which we fought . . . This was not an ordinary war, not one of the usual wars of history, but something that went to the very foundations of *our civilisation* and *our existence as civilised man*.

Friedmann comments as follows:

> By the time the amended preamble emerged after a series of debates behind closed doors, all delegations knew that what General Smuts was aiming at was the prevention of a repetition of wholesale atrocities, such as the systematic extermination of peoples, to sustain undemocratic political systems.

Thus, it would seem that the context in which Smuts gave expression to the phrase 'basic human rights' in his initial draft of a preamble to the Charter, was the same as Churchill's intended context with the Atlantic Charter - *i.e.*, applying 'to states and nations . . . under the Nazi yoke.' Smuts used the phrase 'fundamental human rights' to symbolise those fundamental freedoms that set the Allies apart from Hitler's new order.

A fair conclusion seems to be that Smuts saw human rights as short-hand for those values, the violation of which had led to the wars in which he had witnessed such carnage and devastation. He had witnessed wholesale slaughter between (predominantly European) states engaged in international armed conflict. That is what Smuts set himself to put an end to.

Thus, Smuts' concept of 'fundamental human rights' was closely related to his experiences in the three wars in which he played a crucial role. These wars were armed

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[3007] David Friedmann states that it was a private meeting, but he was given a copy the next day, 8 May, of the remarks that Smuts had made by way of introducing his draft preamble.

[3008] My emphasis.

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conflict between states. It is clear that Smuts' primary concern was not the maltreatment perpetrated by governments against their own populations, but against the populations of other states. Such a view was in accordance with the prevailing idea of his time that only states could be subjects, and thus holders of rights, under international law, and that only states were therefore entitled to the protection of the international community.[3009]

[3009] The general acknowledgment of the idea that individuals, too, were subjects of international law, is a later development.

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CHAPTER 11

SMUTS IN CONTEXT:
A CORRECTIVE TO MAZOWER AND MOREFIELD

1. Introduction

This chapter engages with recent scholarship regarding Smuts, in particular Mark Mazower's *No enchanted palace*,[3010] and Jeanne Morefield's *Empires without imperialism*.[3011] It addresses the contention of both authors that Smuts was preoccupied with issues of racial superiority, and that this was his main motivator in matters of politics - both internationally and domestically.

A comprehensive analysis of Smuts' racial views is beyond the scope of this chapter and this thesis. In fact, the topic is deserving of a thesis-length treatment of its own. Rather, the purpose of this chapter is either to correct, or to place in historical context, certain of the claims made by Morefield and Mazower in regards to Smuts and the issue of race.

2. 'The visionary, globe-trotting statesman-philosopher, committed to his evolutionist paradigm of cosmic harmony under beneficent white guidance'

2.1 Introduction

Noam Chomsky once remarked that the contemporary debates about the United Nations and its humanitarian mission are regularly disturbed by 'the rattling . . . skeleton in the closet' of history.[3012] To a significant degree, both Mazower and Morefield view Smuts as that 'rattling skeleton' in the closet of the history of international organisation. According to Mazower, 'Smuts, exponent of racial superiority, believer in white rule over the African

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[3010] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009).

[3011] J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014).

[3012] As quoted in M Taha 'Review essay - The mystic wand of participation: An appraisal of Mark Mazower's "No enchanted palace: The end of empire and the ideological origin of the United Nations (2010)"' (2011) 12 *German Law Journal* 1529.

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continent, casts an enigmatic shadow over the founding of the new United Nations Organisation at the end of the Second World War.'[3013]

The central aim of Mazower's chapter on Smuts is to lay bare Smuts' Janus face: the dichotomy of how Smuts could promote a colonial system and advocate segregationist policies in South Africa, *and* be chiefly responsible for the the drafting of the Charter's lofty preamble, through which the world expressed its determination to 'reaffirm faith in fundamental human rights [and] in the dignity and worth of the human person.'[3014]

Morefield goes further to assert that, not only was Smuts duplicitous, but he engaged in a policy of deliberate deception to deflect attention away from the violence and illiberalism of the imperial state.[3015] Morefield's essential point is that the liberals she examines - including Smuts - 'have felt compelled to narrate the history of "who we are"' in response to their empire's 'perceived decline' in a manner that 'consistently forgets the imperial state's forays into illiberality in the past and present.'[3016] These liberals do not merely rely on historical omission, asserts Morefield, but rather upon:[3017]

> [P]rolonged and creative forms of deflection that consistently ask the reader to avert her eyes, away from colonial violence and economic exploitation, and back toward the liberal nature of imperial society.

The approach of these authors is to view some of Smuts' pronouncements and actions on the international stage through the lens of (i) his supposed racial fears that were always foremost in his mind and his principal priority (in the case of Morefield); or (ii) his so-called belief in white racial superiority, and that the chief aim of international organisations should be to ensure that the white leadership of the world continues (in the case of Mazower).

[3013] M Mazower No enchanted palace: The end of empire and ideological origins of the United Nations (2009) 19.

[3014] *Ibid* 19 - 21. Mazower describes Smuts as 'the architect of white settler nationalism who did more than anyone to argue for, and help draft, the UN's stirring preamble.' *Ibid* 19.

[3015] J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014) 4.

[3016] *Ibid* 3.

[3017] *Ibid*.

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In this regard Morefield writes that Smuts' 'self-serving liberalism emerged out of his long-term struggle to identify white South Africa with progressive politics.'[3018] And, elsewhere she claims:[3019]

> At base, Smuts was motivated throughout his career by his deeply held racist fears that whites in South Africa, and Afrikaner culture, in particular, would not survive the 'shadows and darkness' of Africa without support from Britain. Smuts's experiences with with armed Africans fighting for the British seemed only to have exacerbated his overwhelming sense that whites were an imperilled community living among barbarians.[3020]

Mazower argues that Smuts sought to prolong the life of empire of white rule through international cooperation.[3021] He explains:

> In Smuts' mind, the UN Charter contained little that was incompatible with his view of the world; there was no commitment to granting independence to the colonies at all, and the United Nations could emerge, as he intended, as a force for world order, under whose umbrella the British Empire - with South Africa as its principal dynamic agent on the continent - could continue to carry out its civilising work. Smuts might no longer speak the classizising language of his youth - when he talked easily about the mission of 'half a million whites' to lift up 'the vast dead weight of immemorial barbarism and animal savagery to the light and blessing of ordered civilization' - but the task was the same as ever. This time, thanks to the new UNO, the white race might succeed.

From the portrait painted of Smuts by Mazower and Morefield a skewed view emerges of Smuts' 55 years in public life in South Africa, in the United Kingdom, and on the world stage.[3022] At times, these authors' treatment of Smuts paints him as nothing more than a caricature - that of the 'visionary, globe-trotting statesman-philosopher, committed to his evolutionist paradigm of cosmic harmony under beneficent white guidance.'[3023]

[3018] *Ibid* 5 Morefield articulates her principal critique against Smuts thus: '[I]n contrast to many accounts of Smuts' internationalist writing and activism, which draw a distinction between his seemingly expansive, international idealism on the one hand and his parochial South African-focused racism on the other, I argue that Smuts' internationalism was, from the very beginning, shot through with a cynical rejection of liberal universalism.' *Ibid* 173.

[3019] *Ibid* 175.

[3020] Smuts' so-called 'experiences with armed Africans fighting for the British' seems to be overstated. It was first raised by Shula Marks, and, although an interesting theory, there exists barely any empirical evidence of this claim. See S Marks 'White masculinity, Jan Smuts, race and the South African War' 111 *Proceedings of the British Academy* (2001) 199 - 223.

[3021] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 30.

[3022] Smuts held civil and military office for 36 of these, to which can be added a further nine years as leader of the parliamentary opposition. N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 153.

[3023] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 57.

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2.2 Smuts and race[3024]

This thesis is not an apologia for Smuts. Not even the most ardent apologist could deny that Smuts was consistently an advocate of racial segregation.[3025] One cannot get around the difficulty by saying that Smuts, a child of his time, had his blind spots; that he was a blinkered genius.[3026]

Firstly, both authors label Smuts a 'racist.' Morefield's bias against Smuts is nowhere better exemplified than in her description of him as '[t]he racist darling of Liberal England.'[3027] Mazower also refers to Smuts' racism.[3028] Secondly, both authors tie Smuts to the *apartheid* system that followed his electoral defeat to the Nationalists in 1948. Morefield claims that Smuts 'laid the groundwork for the segregationist state in South Africa during the interwar era, and earned him [Smuts] the reputation as one of the fathers of apartheid.'[3029] Mazower asks: 'How could the [United Nations'] commitment to universal

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[3024] The transition from *apartheid* to constitutional democracy in South Africa, have encouraged scholars to reassess Smuts' ideas about race. In this regard, in addition to the scholars under discussion, the works of Saul Dubow [S Dubow 'A Commonwealth of Science: The British Association in South Africa, 1905 and 1929' in S Dubow (ed) *Science and society in Southern Africa* (2000) 80 - 81; S Dubow *Racial segregation and the origins of apartheid in South Africa* (1989) 14 - 15, 34 - 35, 186 - 187 n67; S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 45 - 74]; Shula Marks [S Marks 'White masculinity, Jan Smuts, race and the South African War' 111 *Proceedings of the British Academy* (2001) 199 - 223]; Peder Anker [P Anker *Imperial ecology: Environmental order in the British Empire 1895 - 1945* (2001) 75, 195]; Noel Garson [N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 153 - 178]; and Bill Schwarz [B Schwarz *Memories of empire volume 1: The white man's world* (2011) 21 - 25; 277 - 340] stand out. Garson points out that, in general discourse, the term race was used 'very loosely for much of Smuts' lifetime,' to identify the Afrikaner and English sections of the white population as the 'two white races.' This usage was quite common until at least 1948. There was frequent talk of 'racial conflict' between the two sections and Smuts often condemned as 'racialistic' the efforts of his political opponents to mobilise the ethnic and linguistic affinities of Afrikaners in the interests of an exclusively Afrikaner nationalism. N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 157.

[3025] L Blom-Cooper 'Jan Christiaan Smuts (1870 - 1950): Middle Templar extraordinary' (2013) *Advocate* 43.

[3026] D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 186.

[3027] J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014) 174. Morefield' description of Smuts, driven to its logical conclusion, would mean either that (i) in their wholehearted acceptance of Smuts, English liberal society was, by and large, also 'racist,' or (ii) that Smuts was successful in concealing his 'racism' and pulling the wool over the eyes of the whole of liberal England. Neither conclusion seems plausible in any way.

[3028] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 53 - 54.

[3029] J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014) 172.

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rights owe more than a little to the participation of of a man whose segregationist policies back home paved the way for the apartheid state?'[3030]

2.2.1. The peril of labels

The references to Smuts as 'racist' are problematic. The term is loaded and ambiguous, which makes definition inherently difficult.[3031] Moreover, it is unclear what the value of a label such as 'racist' would be when applied to a person of the late 19th/early 20th century. If it is supposed to mean a person who holds racial prejudices, very few of Smuts' contemporaries would escape that label. It is perhaps more useful to ask to what extent did race inform the person's conduct, as judged against his contemporaries, and whether it was a dominant or subordinate consideration.

A common tendency in the scholarship under discussion about Smuts in the context of race, is for the authors to rely on decoding, or attempting to extract special meaning from, certain of Smuts' statements, thereby abstracting them from their context. Before applying to Smuts any label, the responsible historian has, as Keith Hancock put it, 'a lot of work to get through if he is to come within sight of a useful answer.'[3032]

A fully satisfying answer to Smuts' attitude toward race surely would depend on a detailed appraisal of his handling of the various racial issues that successively faced him throughout his long career. Such an appraisal should also not assume that his thoughts on race was the function either of his metaphysical interests in the form of his personal philosophy of Holism, his forays into science, or the experience of his formative years.[3033]

The fact is that , the more one studies Smuts, the more certain one becomes of the conclusion that, ultimately, Smuts is an enigma. We have his assertions, but his inner

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[3030] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 19.

[3031] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 172 n38. Norman and Zaidi point out that racism, as it is commonly understood today, was the rule, not the exception, throughout the United States and Europe. The great powers openly practiced what we would term 'racism', especially in the colonies. In addition to the discriminatory legislation that offended Japanese and Asian citizens, the United States was, in significant part, a racially segregated society, and the rudiment of British and French imperialism was the distinction between thee superior Europeans and the inferior native peoples. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 52.

[3032] The historian's studies in this regard must include the complete record of everything that Smuts ever said in pubic or private on the colour issue; the record of everything that he ever did about it, and of the things he left undone; the record of political activities - parties, pressure groups, elections - among Europeans; the record of political activity among non-Europeans; the record of the interplay between foreign and domestic political situations. K Hancock *Smuts and the shift of world power* (1964) 14.

[3033] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 160.

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core, the cognitive centre of his being, may be impenetrable.[3034] In the first half of 1934, Smuts himself stated to Sarah Getrude Millin, in the context of her request to write his biography:[3035]

> I am a more difficult subject than Rhodes.[3036] I have touched life at so many points . . . I am also more of a puzzle to people. Winston Churchill once said to me that I was the ablest man he had met who was devoid of ambition. He was puzzled. The outside world does not understand and is not interested. No, it is a difficult subject . . .

Smuts once remarked that, from his own knowledge of affairs and their recording in official documents, he had often thought how difficult, if not impossible, it must be for the future historian, who relies on them or on press reports, to form a correct judgment on the past.[3037] So much is personal, unwritten, and not to be found in official records. There is a veil of silence over much which is clearly relevant to the story, but which from its very nature does not come into the contemporary account, though is essential to a knowledge of the truth.[3038]

2.2.2. 'The general who spent his weekends with Quakers'

Another factor that renders labelling Smuts problematic, is that Smuts' character was highly complex. He was a living web of contradictions.[3039] He had more than one persona, and of his several personae, it would be difficult to say which one represented

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[3034] B Friedman *Smuts: A reappraisal* (1976) 186. His innermost beliefs may be unfathomable, writes Garson. N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 153.

[3035] As quoted in SG Millin *The measure of my days* (1955) 124.

[3036] Rhodes was the subject of an earlier biography by Millin.

[3037] 'Jan Christiaan Smuts: The Roundtable's oldest friend' (1950) 161 *The Round Table* 14.

[3038] *Ibid*.

[3039] Schwarz recounts how, after a dinner at the British embassy in Cairo on 7 August 1942, during which Churchill and Smuts discussed history in general, and Gandhi in particular, Churchill's physician, Sir Charles Wilson, recorded the following in his diary: 'While they talked I kept asking myself what kind of man is Smuts . . . Does he think of his fellow Boers . . . as perhaps a little primitive? A South African here speaks of him as 'remote;' even to his own people he is a stranger. No one really know him. It appears that this solitary, austere Boer which his biblical background lives in a world of his own. It is as if he has been cut off from his kind . . . Anyone who steps in his path is ruthlessly pushed aside.' As quoted in B Schwarz *Memories of empire volume 1: The white man's world* (2011) 278.

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the true Smuts in any greater degree than all the others.[3040] Despite his holistic personality, there are not only contradictions in his actions, but also inconsistencies in his private views and intimate thoughts, as revealed in letters he wrote to various friends. In this he was only human. Smuts himself was the first to admit: 'I . . . am a poor errant soul forever seeking and seldom finding - a pilgrim of the world and of life.'[3041]

Mazower identifies and emphasises the paradox between Smuts as international statesman, the defender of democratic and liberal values; and Smuts the South African politician, the upholder of racial segregation. However, the contradictions within Smuts were manifold.

On the one hand, he was depicted as a man of iron will, forceful and dynamic in the field of action. On the other hand, as Hofmeyr, who worked with Smuts closely, observed, Smuts was possessed of a peculiar inertia - a dilatoriness; he was prone to 'let things develop.'[3042] When Hofmeyr read Sarah Gertrude Millin's draft of the first volume of her biography of Smuts, he compared her view of Smuts to his own:[3043]

[3040] B Friedman *Smuts: A reappraisal* (1976) 186. With Smuts, some of the problems of interpretation also stems from the fact that he was endowed with a dauntingly powerful intellect. In, turn this was enriched by the kind of education that he received, first in Stellenbosch, and then in Cambridge, which together furnished him 'with an enviable grasp of the basics of western culture.' N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 154. His exceptional academic achievement is exemplified in the accolade he received from one of his Cambridge teachers, FW Maitland, regarded by many as one of the greatest English legal historians. On the strength of Smuts' performance in coming not only first, but 'brilliantly first' in both parts of the law tripos, which Smuts read simultaneously (an unprecedented achievement in itself), Maitland offered him the opportunity of becoming a leading academic lawyer, 'the great Romanist . . . of English law.' Almost 30 years later, long after he had rejected the option of an academic career in favour of one in public life, the reception of his famous book, *Holism and evolution*, confirmed his scholarly and intellectual standing. In 1930, Smuts was elected to the presidency of the British Association for the Advancement of Science. WK Hancock *Smuts: The sanguine years* (1962) 46; N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 154.

[3041] As quoted in P Beukes *The holistic Smuts: A study in personality* (1989) 185.

[3042] B Friedman *Smuts: A reappraisal* (1976) 186. Ben Cockram, who knew Smuts from 1939 to 1948, states that Smuts once told him that, when faced with an apparently insuperable difficulty, he just left it alone, and when next he reverted to it, he often found that time had removed the obstacle.' As quoted in B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 3. This man, Smuts, who could be high-handed and imperious in the administrative sphere, was strangely cautious and even timid in taking political initiative. He ruled his cabinet with a rod of iron; no-one, save Hofmeyr, dared to question his decisions. Disagreement would have been a sign of insurrection. Yet, in parliament his style was placatory. He rarely struck an angry or aggressive note. He preferred the minor key, even when debating great issues. He would rather propitiate the opposition by conceding an element of validity in their case, than triumph over them by a display of superior debating skill (of which he was eminently capable). B Friedman *Smuts: A reappraisal* (1976) 187.

[3043] As quoted in SG Millin *The measure of my days* (1955) 127.

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> 'Smuts' dilatoriness - the tendency to let things develop - you ascribe to patience - the belief that things will come right. That is, however, not the whole explanation . . . My feeling is that, coupled with his dynamic energy, he also has to-day (I don't know whether he always had) a kind of indolence of mind which makes him tend to shirk issues that, judged by the ultimate standard of values, seem to him unimportant.

To this statement by Hofmeyr, Millin comments: 'I do not know why one should not, indeed, discard unimportant issues. But Hofmeyr meant issues less important to Smuts than to himself.'[3044] Millin alludes, of course, to the issue of 'Native policy.'

Smuts was also a South African patriot who seemed to care more about Europe than Africa. The more Smuts succeeded with the British, the more he failed with his own people.[3045] Indeed, his own people became increasingly puzzled by, and skeptical about, him. Hyam writes:[3046]

> Afrikaner nationalists [saw] him as a clever son of the veldt who sold his birthright for a mess of British imperial porridge, a prodigal son who not only never really came home, but was so compromised at the end of his life as to accept the chancellorship of a British university.

Smuts was 'too anglophile for the Afrikaners, too much the wily old Afrikaner opportunist for the British South Africans.'[3047]

One of the many other contractions in Smuts' complex make-up was his intense, though presumably platonic, relationships with a remarkable group of women, namely Olive Schreiner, Emily Hobhouse,[3048] and the Quaker sisters, Alice Clark and Margaret Gillett.[3049]

[3044] *Ibid* 124.

[3045] SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 138.

[3046] R Hyam 'South Africa, Cambridge, and Commonwealth history' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 405.

[3047] *Ibid*.

[3048] According to Hancock, Emily Hobhouse's presence in Smuts' home at Sunnyside in Pretoria shortly after the Anglo-Boer War: '[W]as living proof of the faith which Smuts had never wholly surrendered, even in the darkest years, that there was another England besides Chamberlain's and Milner's, the England of John Bright. He and Miss Hobhouse became fellow workers of its resurrection.' WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 182

[3049] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 156. Schwarz describes Smuts' relationship with Margaret Clark as 'perhaps his lifetime's greatest friendship.' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 312. Smuts had met her in 1905, when she was only 24 and he was 35. Up to his death in 1950, they had written more than 2 000 letters to each other over a period of 40 years. Much of these dealt with spiritual, ethical, and philosophical matters. P Beukes *The romantic Smuts: Women and love in his life* (1992) 10 - 11.

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Smuts' relationship with these well-educated and intelligent women - whose outlook may be summarised as enlightened, liberal, pacifist, and humanitarian[3050] - intensified while Smuts was in London, serving in the War Cabinet in 1917 and 1918, and then subsequently when he attended the Paris Peace Conference.[3051]

During the week, Smuts would be in Whitehall, administering the massed armies of the western front and the mobilisation of civilians at home - 'an imperial man among imperial men.'[3052] In the evenings, Smuts would retire to his suite at the Savoy where he either worked or talked with Alice Clark.[3053] At the weekends he would leave London for the Gillett's residence in Banbury Road in Oxford.[3054] AJP Taylor, during the First World War, described Smuts as: 'the general who spent his weekend with Quakers.'[3055]

Bill Schwarz rightly observes that these women were 'strange company for Smuts to keep' - the milieu of Alice Clark and Margaret Gillett combined twice-daily bible readings with fierce free-thought when it came to politics, among the living descendants of John Bright's radicalism.'[3056] The author comments as follows on Smuts' relationships with these women:[3057]

> So as one sees his imperial career progressing from one public triumph to the next, one is periodically taken aback by manifestation of this other life [his 'radical inheritance'], which interrupted the fluency

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[3050] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 155. These friendships have become well-known through Hancock's biography of Smuts, as well as through Smuts' correspondence. See also generally P Beukes *The romantic Smuts: Women and love in his life* (1992). For Smuts, another England was always active in his imagination: 'not the England of Empire and Union Jack, but the England of Nonconformist radical liberalism, free-thinking and communitarian, which thrived on its hostility to the imperialism . . . of Milner.' B Schwarz *Memories of empire volume 1: The white man's world* (2011) 308. When, in 1905, Smuts traveled to the United Kingdom to see Campbell-Bannerman, he would pass the time in London with Hobson and Hobhouse, and he would spend his weekends in Street in Somerset with the Clarks, in a 'milieu which combined twice-daily bible readings with fierce free-thought when it came to politics, among the living descendants of John Bright's radicalism.' *Ibid* 312.

[3051] *Ibid*.

[3052] *Ibid*.

[3053] *Ibid* 312 - 313. Alice Clark, Margaret Gillett's sister, often spent time in London on war work. Her wide interests, superior intelligence, and calm Quaker philosophy helped Smuts through difficult times. T Cameron *Jan Smuts: An illustrated biography* (1994) 77.

[3054] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 313.

[3055] AJP Taylor *English history 1914 - 1945* (1965) 137 fn as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 186.

[3056] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 312. In addition, they were not the sort of people to keep their opinions to themselves. Margaret Gillett's outbursts against Smuts, in a lifetime's correspondence, were few and restrained. Those of Emily Hobhouse and Olive Schreiner, especially during the years of the First World War, were frequent and unrestrained. *Ibid* 313 - 314.

[3057] *Ibid* 314.

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of his repeated declarations of faith in the British empire, in white Pan-Africanism, and in separate racial development.[3058]

2.2.3 Politics as the art of the possible

There is no defence to be made of Smuts on the lines that he was a secret liberal,[3059] who realised that to express his views openly would be to lose all chances of political power in South Africa.[3060] By the same token, however, one cannot discuss Smuts' views on race divorced from either their historical context, nor the realities faced by the practicing politician in South Africa during the first half of the 20th century.[3061] In Smuts' South Africa, most discussions of race centred around the challenge of finding a solution to the so-called 'Native question.'[3062]

All of Smuts' public addresses touching on the subject of race were made in the context of his public and political life as a South African politician. Thus, they could never be divorced from his political constituency in South Africa.[3063] The views he offered were subject to various constraints, for example, those set by public opinion, especially in South Africa, but also in Britain.[3064] Obviously the main constraint related to the need to state his views in a manner that was acceptable to his political constituents. For most of Smuts' life, this meant the white electorate of South Africa.[3065]

[3058] Morefield claims that Smuts' 'image as a liberal crusader from the provinces' was further buttressed by his lifelong friendships with English liberals and radicals, such as JA Hobson and LT Hobhouse, and with a number of feminist and pacifist women, including Emily Hobhouse and Alice Clark. J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014) 175. Elsewhere, Morefield writes that Smuts 'assiduously cultivated' these friendships. Morefield seems to suggestion that somehow Smuts maintained these friendships, in many instances for 50 years or more, writing more letters to these women than almost anyone, as a calculated manoeuvre to shore up his liberal credentials? Such a contention does not seem plausible.

[3059] Smuts' friend, Theo Haarhof was convinced that the logic of Holism would have led Smuts to still greater levels of humanity, more inclusive and complete. TJ Haarhoff *Smuts the humanist* (1970) 60 - 71. However, there exists no historical evidence for this proposition. In fact, what the historical evidence does reveal is that, to the end of his life, smuts supported social and residential racial segregation in South Africa.

[3060] RO 'Blinkered genius: Review article of Smuts: The fields of force 1919 - 1950 by WK Hancock' (1968) 9 *The Journal of African History* 491 - 494, 492.

[3061] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 160.

[3062] *Ibid* 161.

[3063] *Ibid* 161.

[3064] *Ibid* 175.

[3065] *Ibid*.

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When South Africa embarked on its democratic transition in 1989 - 1990, *apartheid's* white supporters had, as Alan Jeeves puts it, been 'softened for democratic change,' by decades of racial violence in the townships, and war on the borders that had cost them dearly, both in lives lost and wasted treasure.[3066] The reality of the political dead end that the failed policies and violence of 40 years of *apartheid* rule had produced, pressed heavily on the white electorate, and prepared the way for a major break with apartheid.[3067]

By contrast, at the end of the Second World War, the white electorate of South Africa had experienced practically none of these pressures.[3068] It had little presentiment of the decades of international isolation, domestic violence and regional conflict, and instability that would soon descend on the country.[3069] In 1945, Smuts led a victorious South Africa: a young country industrialised, enriched by the war, and attractive to foreign investors.[3070]

The extent to which its racial policies were moving out of step with those of its Allies, was only beginning to emerge. Domestically, trade-union militancy, urban unrest, and black political agitation, were irritants, but not serious threats to the stability of the state.[3071] These problems were not perceived by the white electorate to be structural, but rather

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[3066] A Jeeves 'South Africa in the 1940s: Post-war reconstruction and the onset of apartheid' (2004) 50 *South African Historical Journal* 7.

[3067] By the end of PW Botha's rule in 1989, few could doubt that the worst was to come unless South Africa changed radically. A respected international actor and member of the Commonwealth in the 1930s and 1940s, South Africa became, under *apartheid*, the world's leading pariah and rogue state. By the end of the 1980s, international economic sanctions threatened the stability of the economy, made foreign investment difficult or impossible, and prevented the government from obtaining credit from overseas sources except on prohibitive terms. It was increasingly difficult for white South Africans to trade, work, or even travel, abroad. *Ibid*. Davenport notes that *apartheid* was largely dismantled by its own creators, and hated on most sides in South Africa to such an extent that its overthrow was carried by a two-thirds majority in a whites-only referendum in 1992. TRH Davenport 'South Africa's Janus moment: The schizophrenic 1940s' 52 *South African Historical Journal* 204.

[3068] A Jeeves 'South Africa in the 1940s: Post-war reconstruction and the onset of apartheid' (2004) 50 *South African Historical Journal* 8.

[3069] *Ibid*.

[3070] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 143. Jeeves expounds: 'South Africa had performed admirably in the war and enjoyed respect and influence internationally that were out of proportion to its size and geopolitical importance. Since before the war, the country had experienced rapid and sustained economic growth that produced unprecedented prosperity for whites.' A Jeeves 'South Africa in the 1940s: Post-war reconstruction and the onset of apartheid' (2004) 50 *South African Historical Journal* 8.

[3071] *Ibid*. The seeds of that resentment was already germinating in Smuts' time, but it was only in his closing years that he began to realise the full implication of this growth. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) xii.

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attributable to the weakness and vacillation of Smuts' United Party government.[3072] In this situation, there simply was no mandate among the white electorate for a serious, potentially costly program of liberal social reform that might even seem to empower Africans.

What Morefield seems to ignore, and Mazower barely acknowledges, is that within the framework of South African politics, Smuts was cast as a 'moderate' in race relations.[3073] He complained often enough in his letters that he was criticised from every quarter - 'both on being too hard on the blacks of South Africa, and too soft.'[3074]

Moreover, on two notable occasions, in the 'black peril election' of 1929,[3075] and again in the *apartheid* election of 1948, he suffered defeat at the hands of those whose views on race were far more extreme and doctrinaire than his own.[3076] In white politics of that era, the political 'visionaries' were all in the National Party, who had dedicated themselves to a program that was the very antithesis of the best thinking of Smuts.[3077]

Smuts was also significantly constrained, or even inhibited, by his sense of politics as the art of the possible.[3078] Smuts could not transcend the parameters set by the

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[3072] A Jeeves 'South Africa in the 1940s: Post-war reconstruction and the onset of apartheid' (2004) 50 *South African Historical Journal* 8.

[3073] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 162.

[3074] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 298. In fact, among Afrikaner nationalists, he was regarded as too liberal.

[3075] The 1929 general election came to be known as the 'Black Peril' election, as the National Party exploited the racial question. The Nationalists claimed that Smuts and his South African Party stood for a policy of 'niksdoen' (doing nothing), as far as the 'black threat' was concerned, and that he also stood for 'gelykstelling' (equality of blacks and whites). Smuts had played right into his opponents' hands, when, in a speech on 17 January 1929, he stated: 'Let us cultivate feelings of friendship over this African continent, so that one day we may have a British confederation of African states . . . a great African dominion stretching unbroken throughout Africa . . . That is the cardinal point in my policy.' As quoted in T Cameron *Jan Smuts: An illustrated biography* (1994) 113.

[3076] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 162.

[3077] A Jeeves 'South Africa in the 1940s: Post-war reconstruction and the onset of apartheid' (2004) 50 *South African Historical Journal* 8. If the Nationalists were skilled at anything, it was to reduce the political debate to a level where the appeal to fear and prejudice, and not reason, became the decisive factor. B Friedman *Smuts: A reappraisal* (1976) 205.

[3078] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 175.

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perceptions of the white electorate.[3079] This was nowhere better illustrated than in the run-up to the election of 1948.

Even had he been so inclined (which he was not), it would have been political suicide for Smuts to announce a pending overthrow of residential segregation or an effective basis for African representation in Parliament, and expect to win the 1948 election.[3080] There can be no doubt that Smuts had every intention of winning this crucial election, and at all costs to keep the Nationalists out of power.[3081] Thus, Smuts dared 'not do anything which will outpace public opinion too much on the eve of an election which may be the most important ever held' in South Africa.[3082] Smuts had to grapple with, as Hancock phrases it, 'an electorate established predominantly upon the principle of racial discrimination'[3083:3084]

[3079] *Ibid*. On 8 September 1946, Hofmeyr wrote to Smuts that hitherto moderate intellectuals, such as Professor ZK Mathews have become committed to an 'extreme line against colour discrimination.' Hofmeyr stated that the government could 'not afford to allow them to be swept into the extremist camp,' but he could not see what they could do to satisfy them, which would also be 'tolerated by European public opinion.' JH Hofmeyr to Smuts 8 September 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 82. In reply, Smuts stated: 'I myself think our native policy would have to be liberalised at modest pace but public opinion has to be carried with us.' Smuts to JH Hofmeyr 28 September 1946 in *Ibid* 93.

[3080] TRH Davenport 'South Africa's Janus moment: The schizophrenic 1940s' 52 *South African Historical Journal* 202. To be sure, Smuts was not prepared to do anything but to stay the government's course of 'practical social policy away from politics.' Smuts to JH Hofmeyr 28 September 1946 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 93.

[3081] Especially after the surprise defeat of Sir De Villiers Graaf in the Hottentot-Hollands by-election in January 1947, and advice he was receiving from party members, if he were to open the door to a racial shift in political power at that time. TRH Davenport 'South Africa's Janus moment: The schizophrenic 1940s' 52 *South African Historical Journal* 202 - 203. Davenport also notes that Smuts could not step out of 'trusteeship mode' when his political opponents on both sides had moved beyond it in opposite directions. *Ibid* 203.

[3082] Smuts to MC Gillett 13 January 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 408. Smuts was also acutely cognisant of not straying too far from his political base: 'The danger is that by appearing pro-Native I may run the risk to lose the general election next year, and thus hand the Natives over to the other extreme.' Smuts to MC Gillett 1 February 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 121. 'UNO has accentuated the extremes . . .' Smuts wrote on 2 March 1947, 'the bridge builder finds the chasm widening.' He found his role as 'peace-maker and bridge-builder' to be extremely difficult. Smuts to D Moore 2 March 1947 in in *Ibid* 126. Smuts had to contend with the views of 'the people by whose vote' he governed South Africa, 'many amongst them hopelessly bigoted and deaf to reason' on the colour question. As quoted in WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 487.

[3083] *Ibid* 488.

[3084] Smuts to MC Gillett 13 January 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 408.

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> I shall do as much of the right thing as possible, but always keep before me the paramount necessity of winning the election! . . . What will it profit this country if justice is done to the underdog and the whole caboodle then, including the underdog, is handed over to the Wreckers.[3085]

In essence, Smuts' greatest battles were to vanquish the Hitlers' of this world, whom he viewed as the supreme danger to Western civilisation. To be able to continue this fight on the world stage, he had to maintain political power in South Africa.

2.2.4 The 'sphinx problem'

Smuts was generally an optimist. Hancock writes of his 'trusting optimism' and his 'sanguine disposition.'[3086] Even in the inter-war years, characterised by the Great Depression and the rise of totalitarian regimes in Europe, Smuts retained his faith in the capacity of 'Western civilisation' to prevail against the forces of 'the new barbarism.'[3087] In his address at his installation as Rector of St Andrews University on 17 October 1934, Smuts stated: ''I remain at heart an optimist.'[3088]

However, on the issue of race in South Africa, coded as the 'Native problem,' Smuts revealed a strong streak of pessimism regarding the longer-term future, or at least about his own ability to resolve it.[3089] As Smuts contemplated 'the political future of the Natives' in a letter to John X Merriman, the Cape politician, Smuts wrote as follows regarding the race question in March of 1906:[3090]

> When I consider the political future of the Natives in South Africa I must say that I look into shadows and darkness; and I then feel inclined to shift the intolerable burden of solving the sphinx problem to the ampler shoulders and stronger brains of the future.

Bill Schwarz astutely observes that, for another four decades or more, Smuts '*was* the future: more than most, "the intolerable burden" was his, and he never found the political

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[3085] 'There speaks to the experienced voice of pragmatism,' comments Blom-Cooper. L Blom-Cooper 'Jan Christiaan Smuts (1870 - 1950): Middle Templar extraordinary' (2013) *Advocate* 42. Bernard Friedman views this as Smuts' chief shortcoming as a politician. A political leader who is determined to use his party as an instrument of social change must recognise that one of his main purposes is to create a favourable climate for change. He must thus lead and influence public opinion. B Friedman *Smuts: A reappraisal* (1976) 167.

[3086] WK Hancock *Smuts: The sanguine years 1870 - 1919* (1962) 32, 121.

[3087] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 176.

[3088] JC Smuts *Toward a better world* (1944) 73.

[3089] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 176.

[3090] Smuts to J.X. Merriman 13 March 1906 in WK Hancock & J Van der Poel (eds) *Selections from the Smuts Papers Volume II June 1902 – May 1910* (1973) 169.

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means to resolve it.'[3091] Sarah Gertrude Millin attributes to Smuts in 1926 the image of 'little brown children [playing] among the ruins of the Union Government buildings' as a characterisation of a possible future of South Africa.[3092]

To his Quaker friend, Margaret Gillett, Smuts wrote in 1937 on the Native question:[3093]

> The evils of the Native exodus from the reserves to the big centres of employment are becoming very serious and creating problems which may have revolutionary effects, for white and black alike. It is most difficult to know how to deal with them and one easily slips into measures which appear harsh and retrogressive.

Kenneth Ingham points out that on issues remote from South Africa, Smuts often had more generous and more constructive ideas than on those nearer to home.[3094] Smuts believed that the 'Native question' was simply insoluble in the foreseeable future,[3095] and he looked vaguely and without any great confidence for a gradual improvement in race relations.[3096]

2.2.5 Smuts, the upholder of Western civilisation

During his lifetime, Smuts did not see the 'Native question' in the form in which it manifested from the 1950s onward. For that reason it would be both unfair and inaccurate to overemphasise the racial question when writing about Smuts. Rather, any historical account of Smuts must keep at least one eye on what Smuts could not have foreseen - although we may see it now - and place Smuts in the context of his own time.

Neither segregation nor human rights was for Smuts his *raison d'être*. Throughout his life, Smuts' primary concern was to defend Western European civilisation, which he viewed as representing the highest form of human achievement.[3097] The preservation of Western civilisation was for Smuts a article of faith. 'Native policy' or segregation, on the other hand, was for Smuts merely a political expedient. Smuts' attitude towards the Native

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[3091] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 294.

[3092] SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 141.

[3093] Smuts to MC Gillett 15 May 1937 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 78.

[3094] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 235.

[3095] This was one of the ways in which he differed from the Nationalists, who believed that they had the answer in *apartheid*.

[3096] *Ibid* 236.

[3097] *Ibid* xi.

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peoples of South Africa was never more than paternal.[3098] Because of this outlook, the 'Native question' found only intermittent expression in Smuts' words and actions.[3099]

Instead, Smuts' focused his attention on the importance of white unity in South Africa in order to promote Western civilisation.[3100] Once his vision of union for South Africa was achieved, he strove for western unity in the face of the new barbarism of totalitarian nations, such as militarist Prussia, Nazi Germany, and Bolshevik Russia.[3101]

There is no question that, for Smuts, Europe was always the centre of civilisation, and the two European peoples in South Africa - Boer and Briton - were the the guardians of civilisation on the southern tip of Africa.[3102] Smuts' preoccupation with Western civilisation became especially acute from 1940 onward as world war, for the second time in a generation, brought European civilisation to brink of destruction.[3103]

[3098] *Ibid*.

[3099] *Ibid*. In 1944 - itself an illustration of the acceptability of racialised views in Smuts' lifetime - *Time* described the 'Native problem' is South Africa as: 'The Unions 2,000,000 whites . . . dominate 7,000,000 blacks, who are politically inarticulate, socially and economically depressed, the potent quantity X in South Africa's future, as Jan Smuts well knows. 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36.

[3100] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) xi.

[3101] *Ibid*. It is also of vital importance to remember than Smuts' attitude was far from reactionary in his day. Although humanitarians had long pleaded the cause of the Native peoples of South Africa and Africa at large, theirs was a minority voice from the fringe. To the members of a technologically advanced society, as existed in Western Europe, it seemed inconceivable that African could, in the foreseeable future, deserve parity of esteem or equal rights with Europeans. The British generally, together with the people of Dutch and French descent in South Africa, could not believe that such a transformation was possible, even when it was occurring before their very eyes. *Ibid* xi - xii.

[3102] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 146; N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 160. Likewise, Dubow states that, for Smuts, always the spread of western civilisation was the driving logic or spirit. S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 55.

[3103] Churchill apparently shared Smuts' apprehension about the fragility of Western civilisation. In a private communication from Churchill to the Foreign Secretary on 21 October 1942, just as the Soviet red army was turning the tide against the German invasion, and with Allied victory seemingly secure if still far off, Churchill expressed the hope for: '[T]her revival of the glory of Europe, the parent continent of the modern nations and of civilization. It would be a measureless disaster if Russian barbaric overlaid the culture and independence of the ancient states of Europe.' As quoted in R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 69 - 70. In a speech on 29 November 1942, Churchill expressed that the three Great Powers, together with the other United Nations, would shape 'the international instruments and the national settlements which must be devised if the free life of Europe is ever to rise again.' As quoted in EJ Hughes 'Winston Churchill and the formation of the United Nations Organization' (1974) 9 *Journal of Contemporary History* 183.

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In his address to both Houses of the British Parliament on 21 October 1942, Smuts stated:[3104]

> Hitler . . . has sought strength in the ancient discarded forest gods of the Teuton. His faith is a reversion to the pagan past and a denial of the spiritual forces which have carried us forward in the Christian advance which constitutes the essence of European civilisation. He has trampled under foot the great faith which has nourished the West and proved the greatest dynamic of all human history and made Western civilisation the proudest achievement of man.

'The European leadership of the world is in great danger, if not already lost . . .' Smuts wrote to the Australian chief justice, JG Latham, in February 1947, 'and the European is being booted out of Asia and the Far East.'[3105] With reference to the 'fissure between East and West,' Smuts declared: 'I am so partial to West European ideas and outlook that I cannot but pray that the West may continue to fight on its own for its cultural standpoint.'[3106]

In April of 1948, Smuts admitted to Margaret Gillett that his heart was not in the upcoming general election in South Africa. His real concern was over what was happening in Europe, where so much was at stake for the future of this world.[3107] He stated: 'We can but hope to hold on grimly to what we have of human rights, which have been saved from the wreckage of two world wars.'[3108]

Progression from smaller to greater wholes: one white nation instead of two language sections; a united South African state instead of divided colonies and republics; membership of self-governing Dominions in a single British Commonwealth, and membership of international organisations, in particular the League of Nations, and later

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[3104] JC Smuts *Toward a better world* (1944) 260 - 261.

[3105] Smuts to JG Latham 12 February 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 124. 'What is the future of Australia going to be in that Asiatic world? Similarly what is the position of South Africa going to be if she can no longer look to European leadership as her bulwark?' *Ibid*.

[3106] Smuts to GGA Murray 17 December 1947 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 169.

[3107] Smuts to MC Gillett 2 April 1948 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 192.

[3108] *Ibid*.

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the United Nations - these were the ends to which Smuts' energies were unreservedly devoted throughout his career.[3109]

In defending European values, Smuts fought against European foes - not Africans. As Bill Schwarz points out: 'Imperialism, militarism, Prussianism. These were his enemies.'[3110] Smuts gave to the waging of war one year in four of his political life. During both the Great War and the Second World War, Smuts thought about both the way of achieving military victory, and about the form that the peace and the post-war order should take.[3111] In both cases Smuts went beyond a 'realistic calculation of interest,' to wider, more universal objectives, such as those embodied in the Preamble to the Charter.[3112]

Although Smuts recognised that the 'Native question' was 'the great sphinx-like problem of South Africa,'[3113] with regard to its solution, in the words of Alan Paton, Smuts 'virtually stood still. This magnificent, original, creative mind did nothing.'[3114] Herein lies another one of the great dichotomies of Smuts.

Smuts lived on several planes.[3115] On the world stage his vision was universal, his analysis acute.[3116] He displayed statesmanship of the highest calibre, marked by vision, courage, and daring. On the South African plane, however, he was a politician fighting for his party and for his country, seeking immediate objectives, and using such means as came to hand.[3117] Ben Cockram, who knew Smuts between 1939 and 1948 comments

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[3109] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 159. According to *Encyclopaedia Britannica*, Smuts' greatness lay in his continuous pursuit of Anglo-Afrikaner unity in South Africa, his reconciliation of Dominion autonomy with Commonwealth cohesion, his contributions to international order, and his leadership in the First and Second World Wars. *Encyclopaedia Britannica volume 20* (1967) 705. One way to understand Smuts' legacy is that - most likely unintentionally - the human rights project that he did not so much to help establish, would indirectly aid in ending the 'sphinx problem' and the excesses of *apartheid*.

[3110] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 315.

[3111] K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 81.

[3112] *Ibid*.

[3113] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 164.

[3114] As quoted in P Beukes *The holistic Smuts* (1989) 178

[3115] B Cockram 'General Smuts and South African diplomacy' Address to a meeting of the Witwatersrand Branch of the South African Institute of Foreign Affairs (16 September 1970) 10.

[3116] *Ibid*.

[3117] *Ibid*.

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that he was, 'perhaps too often content to wait until the plum was ripe: if the fruit ripened in a different way, then that was the way of the tree.'[3118]

This meant that in the area of policy and practice, Smuts did not - as Morefield and Mower seem to suggest - attempt to carry out some blueprint or master plan to resolve the 'Native question' in favour of securing white dominance on the southern tip of Africa. His engagement with race in the domestic sphere tended to be reactionist, rather than creative.

As Smuts did not have any comprehensive plan for dealing with the many problems in the field of race relations, he was compelled to meet each of these problems as it arose and in accordance with its degree of urgency[3119] as a matter of crisis management.[3120]

Smuts believed that 'the Native question' could not be tackled in one fell swoop, and that it was not susceptible to 'finite solutions.[3121] Therefore, Smuts' various responses to the 'Native question' over time was always dictated by practical expediency.

Foreshadowing the pragmatic approach that would later characterise Smuts as a politician, in a speech at Kimberley in October 1895 that marked his entry into public life, Smuts advocated the avoidance of 'drastic measures,' and instead, 'slowly, wisely and cautiously footing forward, tentatively feeling our way, one generation building warily on the experience, the failures and successes of a previous generation.'[3122]

When segregation became an issue of policy, Smuts procrastinated and prevaricated.[3123] Over matters of implementation he was notably inconsistent, more often than not reacting to proposals from others.[3124] At no time was this more apparent than in

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[3118] *Ibid*.

[3119] B Friedman *Smuts: A reappraisal* (1976) 169. Cameron also describes Smuts' attitude in the early 1920s was that the so-called 'Native problem' should be handled step-by-step, as issues arose. T Cameron *Jan Smuts: An illustrated biography* (1994) 90. His handling of the Indian questions was typical of his pragmatic approach. He took action, because the situation, mounting to a crisis, forced his hand. B Friedman *Smuts: A reappraisal* (1976) 187.

[3120] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 161.

[3121] T Cameron *Jan Smuts: An illustrated biography* (1994) 90.

[3122] Speech (1895) in WK Hancock & J van der Poel (eds) *Selections from the Smuts papers volume I June 1886 - May 1902* (1973) 82 - 83.

[3123] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 298; See, for example, L Blom-Cooper 'Jan Christiaan Smuts (1870 - 1950): Middle Templar extraordinary' (2013) *Advocate* 44.

[3124] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 298.

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the 1930s when Hertzog was prime minister.[3125] Smuts fought a rearguard action against Hertzog's proposed Native bill, stating that:[3126]

> [I]f we want to entrench our position merely as white oligarchy by getting around us a ring fence of hate from all the other communities in South Africa, we shall have a very hard and difficult row to hoe in future.'[3127]

Native policy was simply never a matter of prime concern for Smuts.[3128] Writing to his wife from the first session of the General Assembly at Lake Success, Smuts said:[3129]

> It is not particularly pleasant for me, and the end of my life and work, to become involved in this kind of conflict [India's attack on South Africa's racial policies] which leaves me little time for other things in which I am more interested. But I have no choice and shall have to climb the greasy pole as best I may.

In wartime, Smuts simply pushed it into the back of his mind, hoping that events would themselves shape the course which policy should legalise.[3130]

It was to Smuts' credit, and in keeping with his stature, that he should recognise and accept responsibilities beyond the shores of South Africa.[3131] Smuts had dedicated himself to the task of building a new world order.[3132] But, asks Bernard Friedman, was it

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[3125] *Ibid*.

[3126] As quoted in T Cameron *Jan Smuts: An illustrated biography* (1994) 111.

[3127] On 4 April 1929, Smuts wrote to Margaret Gillett: ' I think the scotching of Hertzog's Native policy was a good thing, but grave difficulties remain. One can only pray that people will more and more appreciate that this is not a road for short cuts . . . A Fabian policy is on the whole the wisest in so dangerous a situation. But I sometimes despair of the Native question. It seems to me that it is demanding almost too much of human nature to ask black and white to be just and fair and generous to each other. As quoted in *Ibid* 113. In February of 1936, after nearly ten years of opposing Hertzog's 'Native legislation' in every possible way, Smuts voted in favour of the Representation of Natives in Parliament Bill No 2, which had the effect go dismantling the Cape Native franchise, and with it the last remnant of the Cape Liberal tradition. Of his actions, Smuts said: 'Of course I could have died in the last ditch, so to say, I could have said 'I fight to the bitter end of the Cape Native franchise,' but what would have been the result? It would have been not I who died, but the Natives, metaphorically speaking.' As quoted in *Ibid* 131.

[3128] *Ibid* 225.

[3129] Smuts to SM Smuts 27 October 1946 (translation) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 105.

[3130] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 225. Smuts showed increased distaste for his country' 'bread-and-butter' politics. More and more, Smuts tended to leave affairs at home to his 'able heir apparent . . . Jan Hendrik Hofmeyr.' More and more Smuts saw himself in the role that has had always cherished: an enlightened, holistic statesman of the Empire and the World. 'Holist from the Transvaal' (22 May 1944) 43 *Time* 31 - 36.

[3131] B Friedman *Smuts: A reappraisal* (1976) 157. However, the problems that faced Smuts at home were no less challenging, and probably should have claimed the highest place in his scheme of priorities. *Ibid*.

[3132] *Ibid*.

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logical to assume that he could play a leading part in the construction of the world and leave the structure of society in South Africa unchanged and unaffected?[3133]

If anything, *this* is perhaps the major point of criticism that can be lodged against Smuts: That for all his scholarly learning, paternalist sympathies, and constant talk of justice, fair play, human fellowship and interdependence, of the world as a holistic 'great society of companionship,'[3134] he did nothing to promote the political advancement of Africans.[3135] However, whether it was from inaction or indifference, caution or obtuseness, few among posterity have much good to say of the Smuts who failed to grapple with this problem.[3136]

For Smuts, there was no compromise, no solution, and no reprieve. At the United Nations, Smuts experienced some measure of the deep-felt distaste and abhorrence in the eyes and minds of the rest of mankind about the policy of racial segregation.[3137] In South Africa, he lost the election of May 1948 to the Nationalists on the colour issue. The one issue which he neglected all his life proved to be his Achilles heel and produced the blemish on his character and international reputation.[3138]

Smuts' inability - or unwillingness - to solve this problem in his own lifetime, and the legacy of neglect and insensitiveness to the pain and humiliation which this brought about, hit his country and his people like a tornado in the period after his death.[3139]

[3133] In the final analysis, Smuts' prophetic fervour seemed to desert him when he was confronted with his domestic tasks. He did not make any attempt to project a programme or promising measures more durable than stop-gap devices. Smuts was prepared only to maintain the *status quo*, rather than attempting a bold, forward movement in the field of policy and planning in advance of white public opinion. Smuts was nevertheless thrown on the defensive by an aggressive opposition. They chose their favourite battleground - race relations, where their appeal to colour prejudice would dominate debates. *Ibid* 158. The battle between the Smuts government and the opposition in parliament resolved itself into a contest between the defenders of an ill-defined *status quo*, and the protagonists of a traditional way of life that derived its values and inspiration from the historic past - from the struggle of the Voortrekkers to preserve the ascendancy of an exclusive and isolationist Afrikaner nationalism. *Ibid* 162.

[3134] Unpublished notes of an address by Smuts in the chapel of Christ's College, Cambridge, on Sunday 21 October 1934. A copy is on file with the author.

[3135] R Hyam 'South Africa, Cambridge, and Commonwealth history' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 404.

[3136] *Ibid*.

[3137] P Beukes *The holistic Smuts: A study in personality* (1989) 156.

[3138] *Ibid* 194.

[3139] *Ibid* 156.

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2.2.6 Cosmological time

The racial transformation that Smuts envisioned, on a philosophical and scientific level, 'would occupy eons rather than centuries: "cosmological time," as Hancock puts it.'[3140] In a speech in parliament in 1933, Smuts stated:[3141]

> [W]hat are a few years in the Native question? Our grandchildren two hundred years hence will still be labouring at the Native question. It is our problem. It is the great problem which has been entrusted to South Africa . . .

'[W]e must take the long view in these matters,' Smuts urged the South African Institute of Race Relations in 1942, '[w]e must look ahead not merely for generations but for centuries.[3142]

Bill Schwarz explains that for Smuts, race was not an issue that could be resolved by political society: 'It was too profoundly a historical matter for the state, with its short-term purview and its mechanistic administration, to intervene effectively.'[3143] Schwarz summarises Smuts' position on politics and race as follows:[3144]

> Essentially, race was a question of civilization, an inherited human problem whose resolution stretched far into the future. In the interim, the management of racial difference was best effected, not by politics, but by the good moral judgment of the race to whom history has bequeathed the superior qualities of civilization.

In a speech to the United Kingdom branch of the Empire Parliamentary Association in London on 25 November 1943, Smuts warned against a 'patent solution', a 'general

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[3140] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 172. Ingham also notes that race relations was a long-term question to which Smuts believed time should be left to find a solution. K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 225. Harry Oppenheimer, in the foreword to Piet Beukes' *The holistic Smuts*, writes: '[I]s it possible to a party politician, a practitioner of the art of the possible, and at the same time a mystic? . . . I have come to wonder if this was not Smuts' personal tragedy . . . It was his misfortune that the environment in which he was born and his own temperament made it necessary for him to work on two time scales. As a holist he thought in terms of eternity; as a politician and patriot, trying to serve South Africa to the best of his ability in turbulent times, he had to think in terms of the next election.'

[3141] Speech (1933) in J van der Poel (ed) *Selections from the Smuts papers volume V September 1919 - November 1934* (1973) 544

[3142] Address (21 January 1942) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 338.

[3143] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 293.

[3144] *Ibid*.

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formula,' and a 'simple standard procedure' in resolving the 'problem of race and colour in the Empire.'[3145] The problem of race and colour was:[3146]

> [A] root problem in our Empire . . . which is going to test our wisdom, our farsightedness, our statesmanship, our humanity, probably for generations before any solution can be reached. You can have no simple standardized solution . . . to a problem such as the vast diversity of race and colour, culture, and levels of civilization existing in our Empire. . . . It calls for continuous experiment, for variety of treatment, and for very prolonged practical experience before any satisfactory solution could be reached.

Smuts was born on Queen Victoria's birthday, midway through her reign. As Keith Hancock notes:[3147]

> It was the age of Charles Darwin, Bishop Stubbs, Walter Bagehot and the Fabian Society. It was an age that 'took for granted the "inevitability of gradualness," not only in biological but also in social and political evolution.

Smuts had grown up with the assumption that time was a commodity in bountiful supply. However, in his old age, Smuts had come to see time 'as a rushing torrent threatening destruction to his life's work.'[3148]

Indeed, time was not on Smuts' side.[3149] More perhaps than any other development, it was Asia's dramatic entry into world politics that made the colour problems of South Africa urgent; that made them the supreme issue in the elections of 1948.[3150]

The problem was that Smuts' metaphysical hypothesising about the solution to South Africa's 'Native question' had no bearing on the Africa of his own day.[3151] It did not give rise to any precept for action. Moreover, the fluidity and flexibility than governed it offered no comfort to those on the receiving end of racial segregation, possibly for two centuries or more.[3152]

[3145] JC Smuts 'Speech (1943)' in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 457.

[3146] *Ibid*.

[3147] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 486.

[3148] *Ibid.*

[3149] B Friedman *Smuts: A reappraisal* (1976) 168; K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 225.

[3150] K Hancock *Smuts and the shift of world power* (1964) 14.

[3151] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 172.

[3152] *Ibid*.

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In Smuts' suggestion of 'practical social policy away from politics,' government paternalism would do all that was required to improve the lot of natives.[3153] However, by the mid 1940s, the Native Representative Council was far more concerned about citizen status and political rights than about the social benefits that were due to them.[3154] Africans could no longer be ameliorated with social and material betterment. In the spirit of the Atlantic Charter, they wanted political rights.

2.2.7 Hofmeyr as Smuts' successor

It is abundantly clear that Smuts looked upon Jan Hofmeyr - a professed liberal[3155] - as the future leader of his party and his political heir.[3156] On Smuts' cosmic time-scale, Hofmeyr's were probably 'the ampler shoulders and stronger brains of the future' onto which Smuts wanted to shift 'the intolerable burden of solving the sphinx problem.' However, Nelson Mandela would in fact become that person.

During an important by-election in January 1947, Hofmeyr had prophesied from the United Party candidate's platform that the day would come when Indians and Africans would have representatives of their own ethnicity in Parliament.[3157] Not only did Smuts defend Hofmeyr's controversial statement, but also, twelve months later, Smuts appointed Hofmeyr as deputy prime minister.[3158] With this act, Smuts not only designated his political heir, but he also delivered himself into the hands of his enemies.[3159]

On 29 April 1948, Hofmeyr warned the country that *apartheid* must, in logic, lead to South Africa's territorial dismemberment, with a truncated white state ringed around by

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[3153] B Friedman *Smuts: A reappraisal* (1976) 198.

[3154] *Ibid*.

[3155] *Ibid* 160.

[3156] A Lentin *Makers of the Modern World (The peace conferences of 1919 - 23 and their aftermath): General Smuts – South Africa* (2010) 148; SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 131.

[3157] In response to a question, Hofmeyr stated: 'Natives will eventually be represented by Natives, and Indians by Indians.'WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 497. The results of the by-election was not a positive augury for Hofmeyr's prophesy. The United Party's 'first-class' candidate, Sir de Villiers Graaf, suffered a 'bad defeat' at the hands of the National Party, leaving the 'enemy . . . now cock-a-hoop.' Smuts to MC Gillett 14 January 1947 in iJ van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 118. See also T Cameron *Jan Smuts: An illustrated biography* (1994) 171.

[3158] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 497.

[3159] *Ibid*. Hofmeyr became the National Party's 'bogeyman.' *Ibid* 500.

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black states.[3160] Jannie Smuts comments that Hofmeyr's was a 'just and fair reflection, but in this country of colour prejudice it did his party no good.'[3161]

Hofmeyr's liberalism was seized upon by the Nationalists as a campaign target - he became their bogeyman. In a keynote address at Paarl on 20 April 1948, Dr DF Malan, leader of the National Party, asked: 'Will the European race in the future be able to and also want to maintain its race, its purity and its civilisation or will it float along until it vanishes in the back sea of the South African Non-European population?'[3162] Smuts, Malan continued, was doing nothing to save South Africa from the rising tide of Colour.[3163] In fact, Smuts was ready to open the floodgates. Was he not grooming Hofmeyr as his successor?[3164] Under a Hofmeyr government, white South Africa would not survive.[3165]

In the wake of his electoral defeat in May 1948, Smuts received a letter in which a United Party official said of Hofmeyr:[3166]

> Mr Hofmeyr, despite his ceaseless diligence and in some sense his brilliance, has in the main been a serious embarrassment because of his rather too freely expressed views on the Native and Coloured issues . . .

In June of 1948, Smuts wrote to Margaret Gillett:[3167]

> What is called Liberalism is at a discount here even more than in Britain, and Hof's [Hofmeyr's] liberal views have been exploited against the party in a most unfair way. My successor must be killed in advance of his advent.

In September of 1948, a Smuts supporter, EG Malherbe of the Natal University College, urged Smuts to abandon Hofmeyr as a matter of political expediency.[3168] Malherbe's was purely a realist argument. Malherbe had the highest regard for Hofmeyr's high ideals and

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[3160] *Ibid* 504.

[3161] JC Smuts *Jan Christian Smuts: A biography* (1952) 407.

[3162] As quoted in B Friedman *Smuts: A reappraisal* (1976) 206.

[3163] *Ibid*.

[3164] *Ibid*.

[3165] *Ibid*. See also JC Smuts *Jan Christian Smuts: A biography* (1952) 411. 1948 thus promised to be a 'black peril' election like no other.

[3166] RE Bell to Smuts 28 May 1948 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 204.

[3167] Smuts to MC Gillett 28 June 1948 in *Ibid* 212.

[3168] EG Malherbe to Smuts 8 September 1948 (translation) in *Ibid* 241.

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administrative ability. Hofmeyr was by far the ablest member of Smuts' cabinet, he said.[3169] However, Hofmeyr's 'emphasis at this particular time on abstract ideals regarding the non-whites,' counselled Malherbe - 'ideals which history will one day, when we are all dead, prove to be absolutely right' - allowed the Nationalists to make a caricature of him and his ideals.[3170]

Smuts therefore would be obliged, Malherbe argued, to leave Hofmeyr out of any future political calculations, 'for the sake of maintaining the unity of our people and for the eventual realization of the ideals for which Hofmeyr strives.'[3171] Malherbe stated: 'The realization of his [Hofmeyr's] ideals is a matter of the gradual education of the people and will, even under favourable leadership, take years.'[3172]

Many people - including high-ranking members of Smuts' own party - believed that the election result was Homeyr's doing. The wounded Hofmeyr became the victim of a 'post-election witch hunt' by his own party.[3173] At a meeting on 31 May 1948, which Smuts did not attend, senior members of the United Party demanded that Hofmeyr resign as chairman of the party's central executive. Hofmeyr responded that only Smuts could make such a decision. The situation was resolved in Hofmeyr's favour when, on that very day, Smuts publicly accepted responsibility for the United Party's electoral defeat:[3174]

> I am now an old man, after fifty years hard labourer for the advance of South Africa. If there is blame for the present failure, let it be mine, as no doubt the heavy punishment will be. I can take it.

[3169] *Ibid*.

[3170] *Ibid*.

[3171] *Ibid*.

[3172] *Ibid*. Malherbe also stated: 'That you, at this time of threatening danger, should not be ready to make great sacrifices as regards persons will be disastrous for our people, and our democratic institutions - not to mention Mr. Homeyr's own liberal ideas. He should see this.' *Ibid*.

[3173] T Cameron *Jan Smuts: An illustrated biography* (1994) 177.

[3174] As quoted in *Ibid*.

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In spite of his liberal views on 'Native policy' and the opposition to which they gave rise - even in his own party - Smuts continued unreservedly to support Hofmeyr against all detractors.[3175]

Upon Hofmeyr's unexpected passing on 3 December 1948,[3176] Smuts expressed his profound grief in a broadcast:[3177]

> He [Hofmeyr] too is a war casualty, and perhaps the most grievous of our personal losses . . . his loss is and will remain irreparable, and my sense of that loss, both personal and national, is one which I find impossible to express and almost impossible to bear . . . [T]he sense of what we have lost in his passing remains and will never leave me.[3178]

To Margaret Gillett, Smuts described Hofmeyr as 'our ablest and most high-minded public man, and . . . in a sense the conscience of South Africa.'[3179] 'To me he was my right-hand, Smuts stated, '. . . and . . . my destined successor.'[3180]

The question naturally arises: Why did Smuts continue to support Hofmeyr, despite the fact that Hofmeyr had become a serious political liability? Alan Paton asks:[3181]

> [D]id he know that not even his creative genius could split the rock from which he himself had been hewn? Did he let Hofmeyr speak on, unrebuked, because this man was his own conscience, unpraised because it was not politic? Who knows the answers to these things?

[3175] K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 245. In a certain sense, Hofmeyr was a curious choice. Smuts respected Hofmeyr's diligence and brilliance, but he believed Hofmeyr to be too idealistic for a politician - especially with regard to his liberal sympathies. Smuts had complained in 1936 that Hofmeyr 'exaggerates things and aspects of no real importance . . .' Smuts had said: 'Politics is the art of the possible and the practicable, and one has to give in in small things in order to carry the bigger things. But it is just in this comparative valuation that the snag lies . . .' As quoted in T Cameron *Jan Smuts: An illustrated biography* (1994) 156.

[3176] Millin writes that, six months after the 1948 election, 'overworked, overwhelmed by the contumely of foes and the recrimination of friends,' Homeyr died.' SG Millin 'Smuts at eighty' (1950 - 1951) 29 *Foreign Affairs* 131.

[3177] JC Smuts Speech (1948) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 271.

[3178] Hofmeyr looked upon life as a 'sacred trust, and one to he discharged in the true Christian spirit.' The formula of Christian trusteeship which Hofmeyr found to express his conception of Native policy, was descriptive also of his whole outlook on life and on man's role in the world. *Ibid.*

[3179] Smuts to MC Gillett 6 December 1948 in *Ibid* 272.

[3180] *Ibid*.

[3181] A Paton 'Jan Smuts - The second anniversary' (September 1952) *The Forum* 4.

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Smuts clearly foresaw a troubled road ahead for South Africa internationally because of its racial policies:[3182]

> Our fate here in Southern Africa will be decided not so much here as the needs go the great world . . . The state of the world outside is the most determining factor in our own fate, and if we pay attention to what is happening outside we have not been negligent of the interest of South Africa but are trying to serve this country of ours in the best way possible.

It is more than likely that Smuts anticipated that, after he was gone from the scene, Hofmeyr would unfurl his own banner as the rallying point for a great liberal revival.[3183] The conclusion is therefore justified that, in Smuts' view, Hofmeyr's uncompromising liberal views with regard to African-European relations, was the Africans' and South Africa's best hope for the future. It was not for nothing that the Africans had named Hofmeyr 'Ntembu,' meaning 'our hope.'[3184]

2.2.8 Smuts, the 'father of apartheid'?

To be sure, until the end of his life, Smuts upheld the principle of state-enforced residential and social segregation.[3185] As Saul Dubow points out, like Hertzog, Smuts was a convinced segregationist.[3186]

However, unlike Hertzog, a paternalist element was present in Smuts' thinking from an early age, and eventually received full expression in his attachment to the concept of trusteeship.[3187] Dubow writes: 'Smutsian segregation drew on the incorporationist and "protective" elements inherent in liberal segregation and made explicit reference to the paternalist idiom of trusteeship ideology.'[3188]

In his own mind, Smuts regarded segregation conducted without the beneficence of British liberality to be a danger. Segregation could only work as part and parcel of the

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[3182] *Sen Deb* (23 March 1945) Col 557 as quoted in D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 188.

[3183] B Friedman *Smuts: A reappraisal* (1976) 161.

[3184] *Ibid*.

[3185] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 177.

[3186] S Dubow *Racial segregation and the origins of Apartheid in South Africa, 1919 - 1936* (1989) 15.

[3187] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 173.

[3188] S Dubow *Racial segregation and the origins of Apartheid in South Africa, 1919 - 1936* (1989) 44.

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civilising mission.[3189] Conversely, Smuts believed that segregation deriving only from the instincts of a narrow Afrikanerdom - as he perceived *apartheid* - could only bring about the destruction of South Africa.[3190]

While racial segregation for Smuts was necessary for the preservation of 'European civilisation,' it could not justify the wholesale oppression and exploitation of other races in the interests of whites.[3191] For the very reason that white rule was an agency for civilising other races, it had to conform to the standards of Western civilisation.[3192] Thus, there was a moral restraint governing white rule, which arose from the obligation of just guardianship towards the subject races.[3193]

In a speech at the Savoy Hotel on 22 May 1917, on the occasion of the 'South African Dinner' given in his honour, Smuts stated:[3194]

> [I]n all our dealings with the natives we must build in our practice on . . . the granite bedrock of the Christian moral code. Honesty, fair-play, justice, and the ordinary Christian virtues must be the basis of all our relations with the natives. We don't always practise them. We don't always practise that exulted doctrine, but the vast bulk of the white population in South Africa believe sincerely in that doctrine as correct and true . . .[3195]

Contrary to what Morefield seems to suggest, Smuts did not claim that Africans were forever incapable of acculturation to Western standards or norms, whether by substituting

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[3189] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 300.

[3190] *Ibid*.

[3191] N Garson 'Smuts and the idea of race' (2007) 57 *South African Historical Journal* 173.

[3192] *Ibid*.

[3193] *Ibid*.

[3194] JC Smuts *War-time speeches* (1917) 86 - 88.

[3195] On another occasion, Smut stated: 'It will be a black day for South Africa if the Black man is treated with ill-feeling and prejudice. While is is imperative to build up among the European section a spirit of co-operation and unity, it is also imperative to create a spirit of trust and goodwill so far as the Natives are concerned.' As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 188. And on yet another: 'As long as the Natives are poor and oppressed, South Africa will be poor and oppressed. We can only be happy by raising the level of everybody irrespective of race and colour.' As quoted in *Ibid*.

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them for their own or by achieving some kind of cultural synthesis.[3196] While his Nationalist successors used concepts such as the implications of ethnic and linguistic differences among the Africans of South Africa as part of the 'divide and rule' strategy inherent in *apartheid*, Smuts did not ever adopt that approach. Smuts recognised the universality of the human mind as a feature shared by peoples of all cultures.

Although Smuts never fully abandoned his paternalistic segregationism, he certainly was not the 'father of apartheid' either.[3197] To refer to Smuts as one of the fathers of apartheid is to mischaracterise Smuts's attitude to race as ideological or dogmatic (like that of his Nationalist opponents), and not paternal, and to think away his struggle against the Nationalists and his well-documented opposition against their policy of *apartheid*. Such claims are not history, but modern attempts at reconstructing the past as it logically should have been.[3198]

As Saul Dubow notes, segregation as government policy needs to be distinguished from apartheid, if only due to the 'dogmatic intensity' of the latter.[3199] *Apartheid*, explains Hancock, was a new name for the segregationist policies which all previous governments had pursued on this or that sector of the racial front, 'but never as yet along the whole unbroken front of racial theory and practice.'[3200] *Apartheid* was also an appeal to faith.[3201]

[3196] Morefield argues that in Smuts' understanding of evolution entailed, not only greater diversity, but 'ordered along lines that continually reasserted the superiority of the higher elements over the lower. Therefore, while Smuts might have used the word 'equality' repeatedly in his speeches during 1917 to denote the relationship between the metropole and its imperial parts, 'he certainly did not mean to suggest that each of these parts would be equally autonomous.' The flexible diversity that Smuts ascribed to the Empire and which he felt differentiated it from all other empires, was above all an *ordered* diversity in which lower and higher elements were kept in equilibrium. J Morefield *Empires without imperialism: Anglo-American decline and the politics of deflection* (2014) 190.

[3197] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 452.

[3198] K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 121.

[3199] S Dubow *Racial segregation and the origins of apartheid in South Africa, 1919 - 36* (1989) 178 as cited in B Schwarz *Memories of empire volume 1: The white man's world* (2011) 299.

[3200] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 500. Friedman also writes that *apartheid* was offered as a more thorough-going concept than segregation. *Apartheid* was designed to operate on all fronts where the white and non-white races might come into contact with one another. B Friedman *Smuts: A reappraisal* (1976) 206.

[3201] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 501. Elsewhere Hancock describes apartheid as 'Dr Malan's . . . political bomb, that devastating compound of pure theory and crude slogan which it calls "apartheid."' K Hancock *Smuts and the shift of world power* (1964) 18. At best, apartheid was evidence of ' a preposterous vanity about the Self compounded by a fathomless ignorance of "the Other."' R Hyam 'South Africa, Cambridge, and Commonwealth history' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 408.

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Significantly, Smuts was a proponent of segregation, but he condemned *apartheid* as 'a crazy concept, born of prejudice and fear.'[3202] Hyam explains the difference as follows:[3203]

> What happened from 1948 was that a seismic shift took place, from pragmatic, occasional and limited measures of discrimination and separation, to an ideological, unified, and systematic denial of black rights in all spheres of life: something dogmatic, rigorous, and totalizing. Ad hoc arrangements were superseded by an unmerciful programme, regulating not just physical space, but human movement and social relationships too.[3204]

Whatever criticisms can be made of Smuts, this was emphatically not his world view, let alone that of any British government.[3205]

Smuts was adamantly and vociferously opposed to *apartheid*. Some four months before the election in 1948, Smuts anticipated to win the general election and that he would 'have to carry on for some years more . . . [3206] If he did not continue, he stated, '[w]e shall lose the election and upset the apple-cart for causes dear to me.'[3207] 'The Native policies of the opposition will create chaos here and must be frustrated,' Smuts declared, 'and the good work of racial peace and economic progress must be

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[3202] As quoted in *Ibid*.

[3203] *Ibid*.

[3204] This difference is exemplified in the extension of specific legislation against inter-racial prostitution in the 1927 Immorality Act, to an ideologically driven criminalisation of racial mixture in the Prohibition of Mixed Marriages Act of 1949, the 'highly symbolic first act of the apartheid regime.' *Ibid*.

[3205] *Ibid* 409.

[3206] Smuts to MC Gillett 24 January 1948 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 175. '[A]nd all that when I have been already fifty years at the job and am in my seventy-eighth year!' Smuts exclaimed. *Ibid*.

[3207] *Ibid*.

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continued.'[3208] The apartheid proposals that the Nationalists were contemplating seemed to Smuts devoid of all feeling for the well-being of the African people.[3209]

Smuts detected 'a wave of reaction rolling over the country;' the policies that he had stood for, 'once more under the hammer.'[3210] The Nationalists had exploited the 'Black Peril' to the limit, and played upon the prejudices of 'the good unthinking people' of South Africa until they would not listen to 'any counsel of wisdom or prudence.'[3211] 'I fear we shall pay dearly for all this colour propaganda . . .'[3212]

In 1948 Smuts faced the most crucial election of his career. It was to be a watershed in the political history of South Africa; it was to determine the direction in which the stream of destiny would run. Smuts' fall was not only a personal tragedy, but because of its consequences for South Africa, it constituted a national disaster.[3213]

By the 1950s, segregationist policies that were held in common around the British Empire as the 20th century began, were gradually being legislated out of existence by other states. However, under the Nationalists, South Africa was legislating racial

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[3208] *Ibid*. Smuts wrote: 'I see no other course but to carry on and await developments and trust to the chapter of the unknown. The Native question especially weighs very heavily on me, although even there I think disappointment and frustration may be in store for me, But rather defeat than running away, when there is still fight in me.' *Ibid*.

[3209] *Ibid* 174 - 176. Shortly before the election, in early April 1948, Smuts stated to a friend: 'Dr Malan has just issued a manifesto which threatens to take away from Natives and Coloureds the little political rights which they still have after the retrograde movements of Hertzog's day.' Smuts to MC Gillett 2 April 1948 in *Ibid* 192. In the wake of the general election of 1948, Smuts wrote: '[My] heart did go out to South Africa, who is preparing a heavy future of herself by these childish, thoughtless pranks and indulgements of comfortable prejudices. She simply cannot afford them. But she has not cared, and gone her way rejoicing, not thinking of the tears which will follow, but cannot wash out, this shame.' Smuts to MC Gillett 20 July 1948 in *Ibid* 218. After his defeat in the election of 1948, Smuts' main concern was to protect what he believed he and Botha (and now for many years he alone) had been striving to create: A South Africa in which the white races worked together to establish European civilisation on a firm foundation. Smuts to D Moore 8 June 1948 in *Ibid* 209 - 211. Commenting on the session of parliament that was winding down, Smuts told a friend: 'It has been a bad session. Natives, Coloureds and Indians have been under constant attack, and we in opposition have not been able to ward off the blows struck against those who cannot defend themselves.' Smuts to MC Gillett 29 September 1948 in *Ibid* 250 - 251.

[3210] Smuts to MC Gillett 29 September 1948 in *Ibid* 251.

[3211] *Ibid*.

[3212] *Ibid* 251. Smuts expressed much the same sentiment to another friend: 'Our last general election was fought under an anti-colour complex, in which the forces of reaction won a partial victory.' 'Perhaps I had demanded too much of my poor people,' Smuts contemplated, 'moved too fast and too far ahead of their ordinary outlook.' In this 'reversal,' Smuts did not feel sorry for himself, 'but for the causes I stood for and the prospect which had opened before this country in the new African phase.' Smuts to D Moore 17 October 1948 in *Ibid* 254.

[3213] B Friedman *Smuts: A reappraisal* (1976) 157.

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discrimination into existence - with a vengeance.[3214] It was this difference in direction that created an ever-widening chasm between South Africa and the rest of the world. In sum, under the Nationalists South Africa marched firmly against the whole trend of human progress.[3215]

In February of 1949, Smuts expressed deep concern about the future of South Africa:[3216]

> My repudiation last May came as a great shock - not so much for me personally as for this country and its future. You know how I love it and have never lost faith in it.

'Man . . . in mass seems to be adrift as never before,' Smuts stated.[3217] 'South Africa and this obsession with apartheid' was just a small facet of this immense phenomenon of the 'world-wide drift.'[3218]

Smuts made an ominous prediction: '[T]he racial situation must surely get worse, and become a dark problem for our future.'[3219] Smuts was determined to continue the fight against what he perceived to be 'a perilous mistake.'[3220] South Africa was isolating herself from world opinion in a world situation that was full of danger.[3221]

By the time of the unveiling of the Voortrekker Monument on 16 December 1949, Smuts believed that colour was beginning to dominate the history of the world, and it

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[3214] Likewise, Dubow notes that, just as rest of world renounced colonialism and racism, South Africa tightened its segregationist strictures under the new banner of *apartheid*. S Dubow 'Smuts, the United Nations and the rhetoric of race and rights' (2008) 43 *Journal of Contemporary History* 46.

[3215] B Friedman *Smuts: A reappraisal* (1976) 178.

[3216] Smuts to MC Gillett 12 February 1949 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 283.

[3217] *Ibid* 284.

[3218] *Ibid*. In March 1949, Smuts reported that, '[t]he Nats seem determined to take away the Native vote and to put the Coloured vote on a communal role.' It troubled Smuts deeply that, on the whole, white opinion favoured the Nationalists' policies 'because of the fear they have for the future.' Smuts blamed the National Party: 'The Nats behave inexcusably by exploiting this fear, but the man in the street *has* this fear and one feels for him in his ignorance and short-sightedness.' Smuts to MC Gillett 22 March 1949 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 287.

[3219] *Ibid*.

[3220] *Ibid*.

[3221] South Africans were 'such a good people, sinning not from evil but more from ignorance and the Greeks would have held.' *Ibid*.

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boded ill for the Union.[3222] He again pleaded with the multitude of Afrikaners gathered for a just, rather than a political, approach to the problem of relations.[3223]

2.2.9 Social policy away from politics

While Smuts continued to uphold segregation and the denial of political rights to black South Africans, it can likewise not be denied that Smuts took a reformist direction in 'Native policy' in the early 1940s.[3224]

By then, the acceleration of urbanisation[3225] had indeed demonstrated the obsolescence of the inherited practices of the Hertzog segregation policy.[3226] Smuts understood this clearly.[3227]

In early 1942, he delivered an address to the South African Institute of Race Relations.[3228] Smuts advocated what he called 'trusteeship,' which aimed at the social betterment of black South Africans, providing them with welfare and education from general revenue.[3229] In his address, Smuts concluded that segregation in South Africa had been 'a very great disappointment,' and that it has fallen upon 'evil days.' Above all,

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[3222] Smuts to SG Millin 20 December 1949 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 332 - 333.

[3223] JC Smuts Speech (1949) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 332. In a letter to one of his biographers, Sarah Getrude Millin, Smuts stated, in relation to the Voortrekker Monument: '[I]ts repercussions on our non-European relations will be bad, and that is what weighs heaviest . . . The whole world is moving into a 'Colour' phase of history, with results no one can foresee and South Africa should dread most.' JC Smuts to SG Millin 20 December 1949 in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 333.

[3224] TRH Davenport 'South Africa's Janus moment: The schizophrenic 1940s' 52 *South African Historical Journal* 196; K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 84.

[3225] South Africa was experiencing an industrial revolution in the sense that it was advancing from feudalism to capitalism. Changes in the methods of production were transforming the Natives from a primitive peasantry, into an urban proletariat. The integration of the Natives into the economic life of the country was an inevitable response to the demands of industrial development. This process of integration would also accelerate as the economy expanded. B Friedman *Smuts: A reappraisal* (1976) 163.

[3226] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 299; B Friedman *Smuts: A reappraisal* (1976) 163.

[3227] Smuts clearly thought his own ideas to be an advance of Hertzog's 'segregation policy,' which had 'proven barren.' Smuts to MC Gillett 23 January 1942 in J van der Poel (eds) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 343 - 346.

[3228] Smuts delivered this address at a public meeting under the auspices of the South African Institute of Race Relations on 21 January 1942, reprinted in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 331 - 343.

[3229] K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 85.

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segregation simply was not efficacious in the urban areas: 'You might as well try to sweep the ocean back with a broom.'[3230]

Smuts did not propagate the incorporation of Africans into a single polity with whites. He was also not prepared to recognise that, as a permanent part of the urban population, Africans had a claim to political rights. What he *did* advocate were major government interventions to address the education, health, and housing conditions of the African people.[3231] This marked a significant departure from the recent past, in which education and health provisions for African people had largely been left to missionaries, and public housing projects had been almost exclusive for whites.[3232]

In the wake of Smuts' address to the Institute of Race Relations, there followed a flourish of government initiatives to address the social conditions of African people.[3233] Industrial conditions for African workers improved substantially, and African real wages in industry rose dramatically starting in 1942. This period also saw planning for a national health service and the flourishing of a number of local public health initiatives, with South African proponents of 'social medicine' becoming global leaders in the field. In 1944, a social security committee proposed a comprehensive scheme of benefits for all South

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[3230] Address (21 January 1942) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 335, 336. Malan, too, regarded Smuts' speech as highly significant. He and his followers launched a fierce attack on Smuts for his apparent rejection of segregation. Was Smuts prepared to allow the indiscriminate mixing of races in the big cities - in the urban areas? In the parliamentary session of 1945, Malan made colour politics the main subject of debate. He also made clear that colour would be the dominant theme in the next general election, to take place in 1948. In the House of Assembly, Malan quoted extensively from Smuts' speech to the Institute of Race Relations: 'Seeing the Prime Minister holds that view about the segregation policy - which was South Africa's traditional policy . . . I am entitled to asks . . . Tell us and the country where South Africa is going . . . If you take away the segregation policy . . . you are . . . going to give the Natives an equal status with the White man . . .' *Hansard vol 52* (12 March 1945) as cited in B Friedman *Smuts: A reappraisal* (1976) 165.

[3231] Address (21 January 1942) in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 339 - 342; WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 476.

[3232] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 452.

[3233] *Ibid* 453. The Native peoples had undoubtedly received benefits from the Smuts government. Hofmeyr, in two successive budgets had extended old-age pensions and invalidity grants to the Natives, albeit not on par with those to whites. In 1945, a special At made Native education a charge upon the Consolidated Revenue Fund. Expenditure on Native education increased more than five-fold between 1939 - 1947. In 1947, a substantial amount was earmarked for a school feeding scheme. In the fields of health and housing, the government made increasing amounts available to the local authorities. In the matter of wage-determination, the cost-of-living allowance was made obligatory. B Friedman *Smuts: A reappraisal* (1976) 188.

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Africans. Non-contributory pensions for Africans were implemented, albeit on a racially differentiated scale.[3234]

The key point about these developments is that they were to a large extent premised on a recognition of the breakdown of the African reserve system, and the need to address the social conditions of a permanent African proletariat.[3235] Hyslop argues that this was only possible to attempt because the war had broken Smuts' alliance with the Hertzogite segregationists and opened the path for a new planning-oriented approach to social policy.[3236]

Historians seeking to explain the evolution of South African racial policy tend to look inwards for explanations and to produce a teleological history in which the rise of *apartheid* becomes inevitable.[3237] This is also the trap that Mazower and Morefield fall in to. Dubow argues that, contrary to conventional historical wisdom, 'apartheid was only one of several competing visions of the future . . . In no sense was the triumph of apartheid preordained.'[3238]

Jonathan Hyslop also reasons that South Africa in the 1940s did move in significantly new political directions that cannot sensibly be understood as merely the prelude to *apartheid*.[3239] The policies of these years represent the direct opposite of the attempts to drive the African working class out of the urban areas, which was to be the central feature

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[3234] T Cameron *Jan Smuts: An illustrated biography* (1994) 164.

[3235] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 453. Ingham comments that, in later years, as Smuts began to realise that the segregation of Natives in rural areas was no longer a possibility, Smuts also came to regard himself as a campaigner for better working and living conditions for the Natives in opposition to the the 'Nationalists' apparent desire to banish them to the reserves and forget about them.' K Ingham *Jan Christian Smuts: The conscience of a South African* (1986) 244.

[3236] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 453.

[3237] *Ibid* 440.

[3238] S Dubow 'Introduction: South Africa's 1940s' in S Dubow and A Jeeves (eds) *South Africa's 1940s: worlds of possibilities* (2005) 1-2.

[3239] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 439.

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of *apartheid*.[3240] Instead, they moved towards a strategy based upon acceptance of African urbanisation.[3241]

3. Conclusion

As Morefield herself acknowledges, in June of 1917, Edward Marshall referred to Smuts in an interview as:[3242]

> [A] democrat of democrats, a man for the second time involved in the great struggle for ideals in which human life is wagered against human life with freedom as the ultimate stake.

Is this not the correct lens through which to view Smuts' liberal credentials? By the end of his life he would have been involved - for a third time - in the struggle for ideals through the crucible of war, 'with freedom as the ultimate stake' - first, freedom from the British Empire, then freedom from Prussian militarism, and lastly against Nazi totalitarianism.

[3240] The Nationalists' proposed policy of apartheid would involve the gradual deportation and restriction of urban black South Africans to exclusively black territories or Bantustans that in theory would become autonomous regions. K Tsokhas 'A search for transcendence: Philosophical and religious dialogues in WK Hancock's biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 85.

[3241] J Hyslop '"Segregation has fallen on evil days': Smuts' South Africa, global war, and transnational politics, 1939 - 46' (2012) 7 *Journal of Global History* 439.

[3242] Interview with Edward Marshall in JC Smuts *War-time speeches* (1917) 99.

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CHAPTER 12

CONCLUSION

Smuts had a profound and abiding influence on the development of international law[3243] and organisation - in short, on how the world works today - through the wars that he fought and the peace that he forged. Smuts used his formidable powers of heart and of mind; his physical and spiritual endurance; his mastery of the sword and of the word; and his action and ideas, to shape the world order of the future according to his - *i.e.*, Western - values.

However, the case of Smuts also presents a compelling example of the principal premise of this thesis *i.e.*, how the actions of those who shape international law, like the law itself, invariably have a *dualistic character*: they often serve narrow self-interest *and* more inclusive, visionary objectives. The Janus-face finds expression in the person of Smuts, as in many others in his position, and, in international law itself.

International law, like the law in general, represents relationships of power and value judgments. It is at best a fusion of the self-interest of those who create it, and idealism.

1. Mazower's central question

As set forth in the Introduction, Mazower raises the question about Smuts' part in the creation of the post-Second World War global institutions. How was it that the prime minister of a state based on racial segregation became one of the initiators of the United Nations discourse of human rights? Smuts was someone with a remarkable capacity, in some ways, to see into the future. But, in other respects he was extremely short-sighted. Can his accomplishments and failures be reconciled?

With regard to human rights, the concept as we know it today has developed much farther than Smuts' limited understanding of that notion. Of particular significance in understanding the Smutsian concept of 'human rights' are the specific rights that Smuts chose to cluster together under the rubric of 'fundamental human rights.' As set forth

[3243] With regard to Smuts' contribution to international law, Dugard makes an interesting observation. He points out that law featured prominently in South African foreign policy prior to 1994. The men who shaped and guided South Africa's foreign policy - Smuts, Hertzog, Eric Louw, Hilgard Muller, and Pik Botha - were all lawyers. However, Smuts alone used his talents to advance the international order. At both the Paris Peace Conference in 1919, and the San Francisco Conference of 1945, Smuts worked vigorously to promote his vision of a world in which the rule of law would govern the affairs of states. While international law was for Smuts a sword with which to fashion a new world, for his successors it was a shield, a mean of protecting South Africa against the encroaching values of the latter half of the 20th century. J Dugard *International law: A South African perspective* (2011) 21 - 22.

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above, in Smuts' mind, human rights concerned basic or minimal needs, such as security and life, and that they pertained to matters such as freedom of expression or religion. But, human rights were emphatically not synonymous with equality - whether of a political, social or racial variety. Smuts can thus hardly be seen as a proponent of the modern understanding of human rights.

Smuts viewed the ideological commitment to 'human rights' first and foremost as a method 'to save succeeding generations from the scourge of war' - to prevent at all costs, a third world war that humanity, let alone Western Christian civilisation, could not survive.

In advancing human rights, Smuts' point of reference were the conflicts in which he fought, which were directed against international aggression, and which originated as European conflicts. The struggle for racial equality on the domestic front in South Africa was still in its infancy during his lifetime. His great failure - made all the more apparent by his expansive vision in matters of international relations - was the fact that he did not see what is so obvious today, namely that the same underlying issues were at stake in both cases.

Thus, although the tension between the shining ideal and practical realities cannot be denied, the chasm between these opposites may not be as wide as Mazower may suggest.

Bill Schwarz formulates the essential point commendably:[3244]

> [W]e . . . have to remember how difficult it is to deal with such issues without the condescension of posterity, whatever its enormity. Positions which to us look bizarrely self-contradictory can be experienced in their own historical time as banal in their obviousness. So it was . . . with Smuts.

A second significant point to be made in relation to Mazower's central question is that advances in the human rights project are almost always - as a matter of course and not exception - accompanied by a measure of duality. In addition to the case of Smuts' duality, the differing interpretations of the Atlantic Charter by its principal drafters, Roosevelt and Churchill, also comes to mind as an illustrative example. Such duality arises inevitably from the nature of human rights advances.

Seminal human rights developments come about, not as the coherent manifestations of self-executing principles, but, rather, as the contingent and circumscribed responses by

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[3244] B Schwarz *Memories of empire volume 1: The white man's world* (2011) 319.

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individuals to specific problems that they face. Human rights specifically, just as international law more generally, largely has a retroactive nature.[3245] This is simply a consequence of human agency, and what Christof Heyns has termed the 'struggle approach' to human rights.[3246] The example of Smuts illustrates this as well as any other.

The fact that human rights evolve through struggle mean that they will, by necessity, be incomplete at any given point in time. Because change is fundamental to evolution, contradiction is possible - indeed inevitable. In this context *some measure of hypocrisy* is probably not entirely avoidable, and may in fact be *required* to bring about change - at least as long as the 'hypocrisy' in question is motivated by *bona fides* (overstating one's goals or being overly idealistic), as opposed to motivated by bad faith.

The advance of human rights has often depended on the exposure of dualism of this kind. The alternative to some freedom for expressing a commitment to an unattainable ideal, is a sterile acceptance of what seems to be the confines of the current reality as unalterable. Ralph Barton Perry, professor of philosophy at Harvard University, in commenting on the Dumbarton Oaks Proposals in a letter to the *New York Times* in January 1945, expressed this sentiment thus:[3247]

> The Dumbarton Oaks proposals do not create, and are not designed to create . . . an ideal political and legal order. It is right and proper to judge them . . . imperfect . . . It does not follow, however, that thy should be rejected or despised. They should be enthusiastically applauded for the good that they promise, rather than condemned in the name of the perfection they do not reach . . . Those who refuse to take a step towards their goal because it does not at once reach the goal are likely to stand still or move backward.

2. The significance of Smuts' introduction of the phrase 'human rights' into the Charter of the United Nations

> Human history is not only a history of cruelty, but also of compassion, sacrifice, courage, kindness. What we choose to emphasize in this complex history will define our lives. If we can see only the worst, it destroys our capacity to do something. If we remember those times and places - and there

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[3245] In a similar context, Bentwich opines that the idealists who fashioned the League were reactionary. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 12.

[3246] 'A 'struggle' approach to human rights' in C Heyns and K Stefiszyn (eds) *Human Rights, peace and justice in Africa: A reader* (2006) 15 - 34. in a similar idiom, the record of human rights within the United Nations has been described as 'a story of striving.' R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 57.

[3247] As quoted in S Moyn *The last utopia: Human rights in history* (2010) 58.

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> are many - where people have behaved magnificently, this gives us the energy to act and at least the possibility of sending this spinning top of a world in a different direction.
>
> Howard Zinn (1995)

A singular focus on the duality inherent in Smuts' introduction of the phrase 'fundamental human rights' into the Charter of the United Nations obscures the significance of the achievement.

The phrase 'fundamental human rights' in the Preamble, and the subsequent references to 'human rights' in the body of the Charter, became significant - and advanced the human rights project - in a variety of ways.

2.1 The unintended consequences of grandiose phrases

One of the most extraordinary aspects of the San Francisco Conference was its exclusion of colonised peoples.[3248] While many argued at the time, and have argued since, that the United Nations was therefore in its very conception merely an instrument of Western imperial power, others saw in it great possibility.[3249] Smuts' humiliating experience at the first meeting of the General Assembly in 1946 was foreshadowed by the question of the universal application of the principles expounded in the Atlantic Charter in the aftermath of its publication in August of 1941. As set forth above, the Atlantic Charter quickly became celebrated for a resounding phrase that seemingly described the essential character of the post-war world it envisioned: a peace 'which will afford assurances that all the men in all the lands may live out their lives in freedom from fear and want.'[3250]

It galvanised those engaged in the struggle, not only against Nazism, but also against colonialism.[3251] Nelson Mandela viewed the Atlantic Charter as a statement of

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[3248] M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 314.

[3249] *Ibid*.

[3250] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 503.

[3251] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 503. Likewise, the provision seeking to 'afford to all nations the means of dwelling in safety within their own boundaries,' buttressed the introductory decree of 'self-determination.' Very shortly it created expectations regarding racial equality in unanticipated quarters. *Ibid* 521. It was widely received as positing that the individual has become 'a legitimate object of international concern.' An interpretation, albeit attenuated, of the phrase 'all the men in all the lands' as implying that a person might have a direct relationship to international law, free from the intervening barrier of the sovereign state, held obvious appeal to subjects of oppressive regimes all over the world. *Ibid* 527. Similarly, soon after promulgation of the United Nations Charter, precedent ideas of 'self-determination' and 'sovereign equality of peoples' were applied in the novel context of decolonisation. *Ibid* 549.

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universal principles that expounded not only anti-Nazi, but also anti-colonial, aspirations.[3252] By sharp contrast, however, Churchill's Atlantic Charter was intended for Europeans - an 'inspirational polemic' to raise up the moral of the British and the occupied countries of Europe.[3253] The question of the universal application of the principles expounded in the Charter in the aftermath of its publication became an 'acute and embarrassing problem' for the British especially.[3254] This incongruity created 'lobbying space,'[3255] and anti-imperial forces coalesced around the idea of using the Charter to push their agenda.

Elizabeth Borgwardt contends that the potentially 'radical implications' of this phrase were far from the minds' of the Atlantic Charter's negotiators.[3256] In this sense, the Atlantic Charter was emblematic of the unintended consequences of grandiose rhetoric.[3257] Roosevelt's speechwriter, Robert Sherwood, noted: '[W]hen you state a moral principle, you are stuck with it, no matter how many fingers you have kept crossed at the moment.'[3258]

In reaction to the Declaration of the United States, Gandhi wrote to Roosevelt on 1 July 1942:[3259]

> I venture to think that the Allied Declaration that the Allies are fighting to make the world safe for freedom of the individual and for democracy sounds hollow, so long as India, and for that matter, Africa are exploited by Great Britain, and America has the Negro problem in her own home.

[3252] In December of 1943 the ANC's annual conference adopted a document entitled, *Africans' claims in South Africa,* partly in response to the Atlantic Charter and rising African nationalism and the growing aversion to discrimination around the world. T Karis *Hope and challenge: 1935 - 1952 vol 2* (1973) 89 - 90 as part of T Karis and GM Carter (eds) *From protest to challenge: A documentary history of African politics in South Africa 1882 - 1964.*

[3253] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 532.

[3254] *Ibid* 528.

[3255] M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 314.

[3256] The specific reference to 'all the men in all the lands' were an eleventh hour addition by the 'arch-imperialist' Churchill, probably for its inspirational or poetic effect.

[3257] Normand and Zaidi refer to this phenomenon as the law of unintended consequences: While the United States and United Kingdom governments certainly intended to mobilise support for their war and peace aims, they did not intend to be bound and constrained by such hopes and expectations. However, they had raised high the banner of human rights, and it would be impossible to now put it down without a public backlash. R Normand & S Zaidi *Human rights at the UN: The political history of universal justice* (2008) 95.

[3258] Quoted in E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 528.

[3259] As quoted in *Ibid* 545.

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At least in part, it is the awareness of these disjunctions - the 'yawning gaps between rhetoric and reality,'[3260] which, in the words of Borgwardt, often amounts to 'a cognitive dissonance so strong as to induce near vertigo' - that in its own right may become 'an engine of historical change' for the very purpose of narrowing the gap.

In a congratulatory letter to Roosevelt on the achievement of the Atlantic Charter, United States Supreme Court Justice Felix Frankfurter stated:[3261]

> Somewhere in the Atlantic you did make some history, and like all truly historic events, it was not what was said or done that defined the scope of the achievement. It is the forces, the impalpable, the spiritual forces, the hopes, the expressions, and the dreams, and the endeavors that are released. That's what matters . . .

Smuts' idealistic initiative with regard to the Preamble led to profound consequences for his country. When Smuts proposed that the Charter should contain a preamble which reaffirmed a common faith in 'basic human rights,' 'he never dreamed that it would rebound on himself and his country.'[3262]

Article 2(7) - the domestic jurisdiction clause - had been drafted by British Commonwealth leaders with the clear object of preventing their racially discriminatory

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[3260] *Ibid* 545 - 546.

[3261] Frankfurter to Roosevelt 18 August 1941 as quoted in *Ibid* 554.

[3262] However, to the great surprise of virtually all the delegations, the United Nations decided to discuss the treatment of Indians in South Africa. As a result, Great Britain found herself in the unenviable position of watching two Commonwealth countries openly quarrelling, and having to take the lead in opposing the complaint. L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 132.

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policies brought before the United Nations.[3263] Moreover, Smuts had taken the precaution of seeking, and receiving, assurances that the United Nations could not discuss the treatment of Indians in South Africa.[3264]

However in response to South Africa's 1946 Asiatic Land Tenure and Indian Representation Act, India decided to raise, on the full international stage, her long-felt grievances about the treatment of Indians in South Africa.[3265] Lorna Lloyd comments:[3266]

> Perhaps to her own surprise, and certainly to that of many others, the international propriety of her complaint was not denied. In retrospect it was a huge watershed. For, from this beginning, one can trace the UN's consuming interest in racism and hence what was to become a virtual universal challenge to the legitimacy of the whole South African regime.

Smuts introduced the phrase 'fundamental human rights' into the politics of the United Nations. Having stated the moral principle, Smuts was 'stuck with it.' India quoted those

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[3263] L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 704. Tothill states that the domestic jurisdiction principle was accorded a relatively unimportant place in the Dumbarton Oaks proposals. However, at San Francisco, as Article 2(7) of the Charter, it became one of the basic principles of the United Nations. Tothill notes that, in view of South Africa's reliance on Article 2(7) - indeed, 'white South Africa was the article's greatest "invoker" in UN history' - it might be thought that, in anticipation of future difficulties, the South African delegation would have been prominent in its formulation. According to Tothill, that would have been the National Party government's approach. However, the record reveals that at San Francisco it was the United States and Australia, not South Africa, who took active steps to minimise the possibility of United Nations interference in a country's domestic affairs. Australia had its 'White Australia' policy in mind. In the case of the United States, there was, as John Foster Dulles put it, the 'negro problem in the South,' and there had been the embarrassing position with regard to Versailles in 1919 and the failure of the United States Senate to ratify the Treaty. Duncan Hall, citing an anonymous member of the South African delegation, claimed in 1971 that Smuts 'took a strong stand' at San Francisco, 'against any weakening of the barrier erected by the Covenant' against intervention in matters of domestic jurisdiction. Smuts gave, asserted Hall, 'a term warning against any tampering with this provision.' However, neither the records of the San Francisco Conference, nor the reports of the South African delegation, are supportive of these claims. The South African delegation submitted but three amendments to the Dumbarton Oaks proposals; strengthening the domestic jurisdiction clause was not among them. Tothill argues that it is obviously significant that in the early years of the controversy, when expounding their interpretation of Article 2(7) at length, South Africa spokesmen would refer to the article's drafting history, citing inter alia Evatt of Australia and Dulles of the United states delegation, but never their own representatives. D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 179 - 180.

[3264] L Lloyd '"A most auspicious beginning:" The 1946 United Nations General Assembly and the question of the treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 131.

[3265] L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 705. Smuts attempted to forestall criticism from the Indian community by means of legislation which would provide four members to represent Indians in the House of Assembly, elected on a communal roll (three for Natal and one for Transvaal). In addition, there would be one nominated and one elected member of the senate on behalf of Indians.

[3266] *Ibid*.

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very words against Smuts at the first meeting of the General Assembly.[3267] Keith Hancock states: 'From that time onwards they became a stick with which to beat South Africa.'[3268]

The rejection of Smuts and what his government stood for in the first years of the existence of the United Nations at the initiative of India - in the name of 'fundamental human rights' - represented the broader ownership that the phrase would soon acquire.

2.2 The transformative effect of ideas

In a press conference in 1944, Roosevelt declared:[3269]

> A great many of the previous pronouncements that go back many centuries, they have not been attained yet, and yet the objective is still as good as it was when it was announced several thousand years ago . . . There are a lot of people who say you can't attain an objective or improvement in human live or in humanity, therefore why talk about it . . . Wilson's Fourteen Points constituted a major contribution to something we would all like to see happen in the world. Well, those Fourteen Points were not all attained, but it was a step toward a better life for the population of the world.[3270]

Powerful, sweeping statements of principle are worth making, even if the stated objectives remain largely unfulfilled. It is the aspirational quality of these declarations that enabled

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[3267] This was by no means the first occasion on which Indian South Africans and the government of India had accused Smuts of hypocrisy. With regard to the passage of the Trading and Occupation of Land (Transvaal and Natal) Restriction Act of 1943, the so-called 'Pegging Act,' by which Indians could not buy land in predominantly white areas in Durban, nor whites buy land in predominantly Indian areas without a permit, Smuts wrote to a friend: 'What taunts flung at me, what charges of deserting the idealism which I preach.' Smuts to MC Gillett 15 April 1943 in J van der Poel (ed) *Selections from the Smuts papers volume VI December 1934 - August 1945* (1973) 426. JH Hofmeyr opposed the provisions of the Act relating to the Transvaal on the grounds that, since they only and applied to Indians, and not Indians and whites alike such as those pertaining to Durban, these provisions were discriminatory. 'Personally I am unable to support this proposal, and . . . therefore . . . I should cease to be a member of the cabinet . . . and I have therefore tendered my resignation to you.' Hofmeyr to Smuts 7 April 1943 in *Ibid* 422.

[3268] WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 432. See also D Tothill 'Evatt and Smuts in San Francisco' (2007) 96 *The Round Table: The Commonwealth Journal of International Affairs* 186 with reference to WK Hancock *Smuts: The fields of force 1919 - 1950* (1968) 433. It was doubly ironic that it was Smuts who found himself 'in the dock.' For, as Lloyd points out, in the face of virulent anti-Indian sentiment, Smuts 'had for many years tried to go some way in meeting India's grievances.' Furthermore, Smuts himself had provided India with 'one of the sticks with which to beat him.' It was Smuts who had proposed adding to the Charter a preamble declaring humanity's common 'faith in basic human rights.' In the final version this became a commitment to 'fundamental human rights' and, although the Preamble was not legally binding, Smuts' high-minded initiative was to be quoted against hi m in 1946 and to dog South Africa thereafter. L Lloyd '"A family quarrel:" The development of the dispute over Indians in South Africa' (1991) 34 *The Historical Journal* 704.

[3269] As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 43 - 44.

[3270] In a speech marking the end of the first Quebec conference, Roosevelt commented: 'I am everlastingly angry at those who assert vociferously that the four freedoms and the Atlantic Charter are nonsense because they are unattainable. If those people had lived a century and a half ago they would have sneered and said that the Declaration of Independence was utter piffle. If they had lived nearly a thousand years ago they would have laughed uproariously at the Magna Carta. And if they had lived several thousand years ago they would have derided Moses when he came from the Mountain with the Ten Commandments.' As quoted in *Ibid* 43.

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leaders such as Nelson Mandela and Jawaharlal Nehru to 'hear the news, not the vehicle that brought it.'[3271] The principles laid down in instruments such as the Atlantic Charter and the Declaration of the United Nations were not passively received; rather, they were actively transformed.

The 19th century British historian, Lord Acton, wrote that the French Declaration of the Rights of Man and Citizen was 'a single confused page . . . that outweighed libraries and was stronger than all of the armies of Napoleon.'[3272] A comment made by Churchill about the Atlantic Charter captures the dynamic through which instruments, such as the Preamble, becomes cultural and political icons: '[It] was not a law, but a star.'[3273] Similarly, the Preamble became infinitely more powerful as an instrument of human freedom than Smuts could ever have imagined.

The San Francisco Conference may have allowed what Alexander Cadogen called 'the little fellows,' their voice, but the resulting document reflected the Great Powers' 'keen interest in preserving their sovereignty intact.'[3274] However, states Mazower, Cadogen's 'breezy contempt' for the smaller nations was misplaced.[3275] In the period of three years from the signing of the United Nations Charter in 1945 to the proclamation of the United Nations Charter in 1948, Great Power cooperation 'became a casualty of the Cold War.' Moreover, the General Assembly emerged as a forum in which the rights agenda could be advanced in ways unforeseen at Dumbarton Oaks.[3276]

On the one hand, there were those with expansive hopes that the new organisation could actively be used to advance international human rights beyond all previous boundaries.[3277] On the other hand, of course, there were others who, armed with the domestic jurisdiction clause (Art 2(7)) of the Charter, were committed to national sovereignty.[3278] Lauren comments that it was generally believed that any resolution of

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[3271] E Borgwardt '"When you state a moral principle, you are stuck with it": The 1941 Atlantic Charter as a human rights instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 558.

[3272] As quoted in *Ibid* 559.

[3273] Paraphrased from *Ibid* 560.

[3274] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 394.

[3275] *Ibid*.

[3276] *Ibid*.

[3277] PG Lauren *The evolution of international human rights: Visions seen* (2003) 199.

[3278] PG Lauren *The evolution of international human rights: Visions seen* (2003) 199.

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these conflicting positions would take time and would depend on changing historical circumstances.[3279] However, few could anticipate just how soon the contest would be joined.[3280]

As Mazower notes, some of history is the 'product of accident and the inability to foresee outcomes or control events . . .'[3281] Even though the United Nations was established as a Great Power hegemony, Third World nationalists took its universalist rhetoric at face value, exploited its mechanisms, and fostered international public opposition to continued colonial rule.[3282] As the Cold War confrontation between the United States and the Soviet Union escalated, the smaller nations found that they were able to advance their own interests - often linked to the human rights agenda - in unexpected ways.[3283] The General Assembly thus turned 'astonishingly quickly' into a forum for anti-colonialism,[3284] and publicising human rights abuses internationally.[3285]

Smuts was among those caught off-guard. As early as the second part of the first session of the General Assembly in 1946, the delegation of India succeeded in placing on the agenda an item concerning the treatment of people of Indian descent in South Africa.[3286] This issue was debated extensively in the General Assembly. The most important consequence of the resulting resolution was the opening of the door to a wider international discussion of South Africa's racial policies.[3287] This question became a test case for the United Nations over the next several decades.

[3279] *Ibid*.

[3280] *Ibid*.

[3281] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 394. As opposed to much of history, which is, of course, the 'product of conspiracy of policy-makers' deliberate shaping of events.' *Ibid*.

[3282] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 188.

[3283] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 394, 397. Sufficient ambiguity had been built into the Charter to allow a new emphasis on human rights to emerge during the Cold War.

[3284] M Mazower *No enchanted palace: The end of empire and ideological origins of the United Nations* (2009) 152.

[3285] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 395.

[3286] RB Ballinger 'UN action on human rights in South Africa' in E Luard (ed) *The international protection of human rights* (1967) 251.

[3287] RB Ballinger 'UN action on human rights in South Africa' in E Luard (ed) *The international protection of human rights* (1967) 251 - 252.

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Manu Bhagavan argues that the restriction of South Africa's sovereignty through the meta-institution of the United Nations, was seen at that time, and should be seen historically, as a *great moment of possibility*, when older paradigms could be rejected and the world could be fashioned anew.[3288]

2.3 The gravitational effect

The statement of the ideal can exercise a 'gravitational force'[3289] to bring reality into greater conformity with the ideal. As Louis Henkin stated with reference to human rights standards: 'Acceptance, even hypocritical acceptance, is a commitment in principle to which one can he held accountable.'[3290]

As powerfully illustrated by Smuts' duality in introducing the phrase 'fundamental human rights' into the Preamble, the fact of the existence of paradox by no means eradicates the idiom.[3291] Paradox does not mean contradiction. Rather, paradox calls for the persistent negotiation between claim and practice.[3292]

The interplay between visions that support human rights and ideas and traditions aligned in opposition, and the interests represented by both, moved the course of much of

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[3288] M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 325.

[3289] Dworkin uses the term in a slightly different context. See R Dworkin *Taking rights seriously* (1977) 111.

[3290] "[U]niversal political and legal acceptance does not guarantee universal respect for human rights. Many will see such acceptance as rhetoric or even hypocrisy. I have been sometimes tempted to offer two cheers for hypocrisy in human rights. Two cheers . . . recognize that 'hypocrisy is the homage that vice pays to virtue;' it is important that the concept of human rights is the virtue to which vice has to pay homage in our time. ." L Henkin, 'The universality of the concept of human rights' (1989) 506 *Annals of the American Academy of Political and Social Science* 13.

[3291] K Cmiel 'The recent history of human rights' (2004) 109 *The American Historical Review* 132.

[3292] *Ibid*, in discussing the work of Marilyn Young.

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history.[3293] These human rights ideas, which were considered outlandish at the time, 50 years later are at the heart of current political debates.[3294]

The United Nations today would even be hardly recognisable to those, such as Smuts, MacKenzie King of Canada, Jan Masaryk of Czechoslovakia, Peter Fraser of New Zealand, or Edward Stettinius of the United States, who played significant roles in the San Francisco Conference in 1945, but who did not survive to see the organisation mature.[3295]

The protection of individual rights through legal instruments emerged as a feature of the legal systems of England, the United States and, France. However, the effectiveness of domestic legal arrangements varied considerably over time, and gross abuses occurred. For example, in France, the excesses of the Terror violated many of the rights proclaimed in the Declaration of the Rights of Man and Citizen.[3296]

Similarly, the United States Bill of Rights was proclaimed upon theories of natural law and inalienable rights. However, actual practice *de facto* deprived the majority of the United States population - comprising women, slaves, the unpropertied, indigenous peoples and children - of constitutional protection.[3297]

[3293] PG Lauren *The evolution of international human rights: Visions seen* (2003) 28. In an interview with AlgerHiss in 1990 as part of the UN-Yale Oral History project, the following colloquy occurs: '[Interviewer]: Human rights became a rather important part of the Charter and has since been a very important part of the UN's history. Was that foreseen in the studies in the State Department? Hiss: I can't say that in my knowledge it was. No.' Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 11.

[3294] J Krasno 'A step along an evolutionary path: The founding of the United Nations' (2000) 2 *Global Dialogue* 18. Paul Kennedy points out that, were a diplomat or editor of year 1900 to be transported to our present world, he or she would be astonished at the role that international bodies play on behalf of global society. P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) xi.

[3295] LS Finkelstein 'The United Nations: Then and now' (1965) 19 *International Organization* 368 - 369.

[3296] AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 91.

[3297] *Ibid*. Lauren also points to the fact that the Constitution itself provided official sanction for the practice of slavery by prohibiting Congress from taking any action to eliminate the slave trade for 20 years. Many prominent leaders, including Washington and Jefferson, themselves owned slaves. Women in the United States had to wait more than a century for their guarantee of the right to vote. In addition to gender, every individual state restricted voting on the basis of age, race, and property ownership, thus denying political rights and effective representation to a majority of its population. None of these instruments provided any protection to the Native Americans, whom Washington and Franklin decried as 'ignorant savages' and 'beasts,' and whom Jefferson desired to pursue 'to extinction.' PG Lauren *The evolution of international human rights: Visions seen* (2003) 31. In the modern era, there is of course also the example of McCarthyism in the United States. AWB Simpson *Human rights and the end of empire: Britain and the genesis of the European Convention* (2004) 91.

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It is important to recognise that the Declaration of Independence, the United States Constitution, and the Bill of Rights, as well as the Declaration of the Rights of Man and Citizen in France, reflected 'far more vision than reality.'[3298] The value of these documents lie not in immediately entrenching human rights for all in practice, but in keeping ideals alive - often in the face of uncompromising opposition and even brutal persecution - that served to inspire future generations to develop a more sophisticated discourse about human rights.[3299]

2.4 The perils of perfectionism

Freda Kirchwey, editor of *The Nation*, warned against the Versailles-era sin of perfectionism:[3300]

> [T]he alternative to an unsatisfactory international order is not generally a satisfactory international order; it is uncontrolled power politics, international anarchy, and everything thrown into the lap of the nation with the fiercest appetite and most brutal arrogance.

'In the field of human rights as in other actual problem of international law,' noted Josef Kunz, 'it is necessary to avoid the Scylla of a pessimistic cynicism and the Charybdis of mere wishful thinking and superficial optimism.'[3301]

It is undeniable that the League of Nations failed to live up to its Wilsonian ideals for the maintenance of international peace and security. It proved to be completely ineffectual in its principal task, that of halting, or even ameliorating, the nationalist aggression that led to the Second World War.

However, it should also be borne in mind that the creation of the League represented only the latest stage in the centuries-old dream of bringing order to a lawless world - 'the sort of herculean task,' states Robert Hildebrand, 'that should have made understandable a certain number of missteps and false starts on the part of those who attempted it.'[3302]

[3298] PG Lauren *The evolution of international human rights: Visions seen* (2003) 32.

[3299] RH Tawney as quoted in *Ibid*.

[3300] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 171.

[3301] J Kunz 'The United Nations Declaration of Human Rights' (1949) 43 *American Journal of International Law* 320.

[3302] RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 1 - 2.

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The fact is that the League was the closest the world community had come to the 'parliament of man' in Tennyson's Locksley Hall.[3303] For the first time in the history of humankind, there existed an international organisation, with headquarters in a neutral state, which was committed to solving problems through peaceful means and thus avoiding recourse to war.[3304]

In the United States in 1944, the Commission to Study the Organiszation of Peace released a report entitled *International safeguard of human rights*.[3305] The Commission warned:[3306]

> We may be chastened by Wilson's rejection at Paris of the principle of racial equality - a rejection which embittered the Oriental world. The cancerous Negro situation in our own country give fodder to enemy propaganda and makes our ideals stick like dry bread in the throat. In anti-Semitism we are a mirror of Nazi grimaces. These motes in our own eye is not to be passed over. There is, however, a vast difference between a government policy of persecution, as in Germany, and laggard customs which have not yet been broken on the wheel of a legal policy which forbids them. We cannot postpone international leadership until our own house is completely in order . . . Through revulsion against Nazi doctrines, we may, however, hope to speed up the process of bringing our own practices in each nation more in conformity with our professed ideals.

Critics of the Dumbarton Oaks proposals called attention to the disjuncture between the 'rhetoric of democracy, inclusion, and sovereign equality,' and the reality of 'deference to "experts," exclusivity, and perceived Great Power arrogance.'[3307]

[3303] The League of Nations was, in part, a response to the idea that war anywhere was a threat to the peace of all. Through man's control over nature, the world had become one neighbourhood. The League was therefore to be an organised society of nations, and help man to become a citizen of the world. The Covenant of the League was an attempt to give expression to burgeoning internationalism. N Bentwhich *From Geneva to San Francisco: An account of the international organisation of the new order* (1946) 9. A British commentator observed: 'Before the League [of Nations], it was held both in theory and in practice that every state was the sole and sovereign judge of its own acts, owing no allegiance to any higher authority, entitled to resent criticism or even questioning by other States. Such conceptions have disappeared forever: it is not doubted, and can never again be doubted, that the community of nations has the moral and legal right to discuss and judge the international conduct of each of its members.' As quoted in E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 69.

[3304] P Kennedy *The parliament of man: The United Nations and the quest for world government* (2006) 9 - 10. There were also a number of League activities that served, in effect at least, to protect individuals' rights, for example, the anti-slavery convention of 1921, the advisory committees on the traffic in women and children, the International Labour Organization and the League's health organisation, the refugee organisation established by the League in 1921, and the Committee in the Traffic in Opium and Other Dangerous Drugs. E Luard 'The origins of the international concerns over human rights' in E Luard (ed) *The international protection of human rights* (1967) 16 - 18. See also S Moyn *The last utopia: Human rights in history* (2010) 72.

[3305] PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 5.

[3306] As quoted in *Ibid* 6.

[3307] E Borgwardt *A new deal for the world: America's vision for human rights* (2005) 148.

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'The practical choice at this time,' commented Under Secretary of State, Joseph Grew, during a radio broadcast about the prospective United Nations, 'is clearly between an organization of the type proposed at Dumbarton Oaks and international anarchy.'[3308] Assistant Secretary of State, Archibald McLeish, expressed the belief that the planners had to avoid both the errors of the cynics, who thought that there must always be war, and those of the perfectionists, who would accept nothing less than an ideal world order.[3309] Gladwyn Jebb of the Foreign Office also warned against aiming too high 'for this wicked world.'[3310]

As to be expected, the final provisions of the Charter of the United Nations, and specifically those concerning human rights, produced a variety of reactions and assessments. For many, the Charter marked an 'unprecedented accomplishment.'[3311] Never before in history or the annals of diplomacy had issues of international human rights been so openly discussed, strongly advocated, or rendered such an integral part of an agreement negotiated by so many countries, cultures, and races.[3312]

Others had a starkly different reaction, and accused the delegates at San Francisco of producing a Charter of little or no value.[3313] It was clear to many that the war-time rhetoric - that included 'human rights' - masked other agendas.[3314] In comparing the

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[3308] As quoted in RC Hilderbrand *Dumbarton Oaks: The origins of the United Nations and the search for postwar security* (1990) 248.

[3309] *Ibid*.

[3310] *Ibid* 250.

[3311] PG Lauren *The evolution of international human rights: Visions seen* (2003) 194.

[3312] For these reasons, he concluding speeches of many delegates at the San Francisco Conference spoke profusely of 'one of the great moments in history,' 'the welfare of all men,' of international justice and equality, and of the cooperation among diverse 'races and creeds.' As quoted in PG Lauren 'First principles of racial equality: History and the politics and diplomacy of human rights provisions in the United Nations Charter' (1983) 5 *Human Rights Quarterly* 20.

[3313] PG Lauren *The evolution of international human rights: Visions seen* (2003) 194. Sellars states the cynical views: 'Human rights crusades have been designed primarily to enhance the West's self-image, and to court domestic public opinion. As a result, these policies have aided powerful benefactors rather than their supposed beneficiaries in broken and war-ravaged nations.' K Sellars *The rise and rise of human rights* (2002) inside flap back.

[3314] S Moyn *The last utopia: Human rights in history* (2010) 46. The activist Rayford Logan, was keenly aware that the new international organisation, although heavily laced with principle, was sorely lacking in clear, practical procedures to implement the human rights provisions, let alone the power to enforce them. PG Lauren *The evolution of international human rights: Visions seen* (2003) 194.

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idealistic war-time promises with the final result, *Time* magazine concluded that the final agreement constituted nothing more than 'a charter of world power.'[3315]

Still other delegates and observers viewed the Charter and its human rights provisions, neither as a magnificent achievement that would suddenly bring about utopia, nor as a tragedy that would destroy the cherished nation-state.[3316] Instead, they viewed it in the context of the time, and they regarded the practice and politics of diplomacy:[3317]

> [A]s the art of the possible, balanced somewhere between the cynics and the perfectionists, and knew that no nation or group could obtain everything they wanted over the course of a mere two months of negotiation.

'We cannot indeed claim that our work is perfect or that we have created an unbreakable guarantee of peace,' Lord Halifax, admitted: 'For ours is no enchanted palace "to spring into sight at once" by magic touch or hidden power.'[3318]

The Charter of the United Nations that emerged from the San Francisco Conference did bear the unmistakable traces of competing Great Power interests.[3319] By the same token, however, it did 'highlight human rights in an entirely unprecedented fashion,' both in the Preamble and the main body of the Charter itself.[3320] In this regard, the Charter of the United Nations did, indeed, represent the genesis of practical accomplishments and genuine change during the remaining years of the 20th century.

These accomplishments were to have long-term significance: the principle of self-determination of states; the principle of non-discrimination on the grounds of race, sex, language, or religion, among nations or peoples; the pursuit of international cooperation to promote human rights for all people;[3321] and the creation of a Commission on Human Rights as an organ of the Economic and Social Council.[3322]

[3315] *Ibid*.

[3316] *Ibid* 195.

[3317] *Ibid*.

[3318] As quoted in PG Lauren *The evolution of international human rights: Visions seen* (2003) 197. (Lord Halifax, Verbatim Minutes, 26 June 1945, in UNICO, Documents I: 698.)

[3319] M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 393.

[3320] *Ibid*.

[3321] And universal respect for, and observance of, human rights and fundamental accompanied by obligations of member states to support measures to achieve these goals, as set forth in Articles 55 and 56 of the Charter. R Jolly, L Emmerij, and TG Weiss *UN ideas that changed the world* (2009) 55.

[3322] Article 68 of the United Nations Charter. *Ibid*.

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Louis Henkin shows that 1945 saw a small, but clear, firm, bold step from state values towards human values; a small but clear derogation from state 'sovereignty.'[3323] The condition of human rights became a subject of international concern, in principle as well as in fact, to an increasing extent.[3324] The international law of human rights started to penetrate the state monolith beyond repair.[3325] To be sure, the political system has been, and continues to be, more sensitive to military and economic power than to human values.[3326] However, the change over half a century is real, permanent, and irreversible.[3327] There can only be more of it, which bodes well for human values and for human beings in future.[3328]

As idealistic as Smuts' pronouncements may sometimes come across, he was no idyllic utopian. Smuts knew that 'One World' was a just, but distant, goal. In the meantime, he was satisfied with making measured movement in this direction.[3329] This is clear from Smuts' description of the Charter as:[3330]

> [N]ot a perfect document by any means. It is full of compromises over very difficult and tangled problems. But at least it is a good practical, workmanlike plan for peace - a very real and substantial advance on all previous plans for security against war.

Smuts knew better than most that both the Covenant of the League and the Charter of the United Nations were both drawn up in sharp and immediate revulsion for war.[3331] In neither case was the mood one appropriate to profound enquiry or dispassionate deliberation. Nothing less than a swift promise of a vigorous check upon violence in world politics would have satisfied the emotional demands of the time.[3332]

[3323] L Henkin 'Human rights and state "sovereignty" (Sibley Lecture, March 1994)' (1995 - 1996) 25 *Georgia Journal of International and Comparative Law* 34.

[3324] *Ibid*.

[3325] *Ibid*.

[3326] *Ibid* 44.

[3327] *Ibid*.

[3328] *Ibid*.

[3329] M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 345.

[3330] Smuts' speech at the closing Plenary Session of the San Francisco Conference as reprinted *verbatim* in JE Harley *Documentary textbook of the United Nations* (1947) 498 - 499.

[3331] PE Corbett 'Governments vs. peoples' (1954) 6 *World Politics* 246.

[3332] *Ibid*.

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On 16 December 1949, in his last public address before his death, at the occasion of the unveiling of the Voortrekker Monument on Skanskop, near Pretoria, Smuts quoted old President Kruger's last message to his people: 'Seek in the past what is good and beautiful, to shape your ideal accordingly, and realise it for the future.[3333]

3. The expanding circle

Smuts shaped his time, but he was also shaped by it. For Smuts and the delegates gathered in San Francisco, theirs was not the hopeful world of 1919, but the broken world of 1945. The historical moment in which Smuts had introduced the phrase 'fundamental human rights' into the Preamble of the Charter of the United Nations was more receptive to the human rights idea than any preceding period in history.

The birth of the United Nations in 1945, combined with the end of the Second World War, the defeat of fascism and Nazism, and the beginning of the terminal decline of overt colonial authority, gave rise to a unique instant in the world's history, a 'global moment' unparalleled by any other point in time.[3334] The confluence of these events enabled what one scholar, in a different context, had termed a 'Grotian moment.'[3335] That is to say, it was a time when old ways of thought and old institutional arrangements were so obviously inadequate - as they had been in Grotius' time - that something different was required.

Smuts generally lived in a time that was radically different from what came before it. The human propensity to pursue self-interest had not changed, but humanity viewed self-interest in much more expansive terms than ever before in recorded history. There was more scope for altruism, and less reason to view interaction with others as a zero sum game that often called for a ready resort to violence. There has been an exponential growth of the conditions for human co-operation, as opposed to conflict, during the 20th century.

Historians refer to the period since the Second World War as the 'long peace' - probably the longest period of time in recorded history without war between the great powers.[3336] One of the reasons for this unprecedented occurrence is the United Nations.

[3333] JC Smuts Speech (1949) in J van der Poel (ed) *Selections from the Smuts papers volume VII August 1945 - October 1950* (1973) 332.

[3334] See M Bhagavan 'A new hope: India, the United Nations and the making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 311 - 312.

[3335] DV Jones *Toward a just world: The critical years in the search for international justice* (2002) 212 - 213.

[3336] See S Pinker *The better angels of our nature: Why violence has declined* (2011) 189 - 294.

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[3337]Outside the scope of armed conflict, the change has been no less dramatic. Violence in all its forms, on average, has seen a steady and sustained decline.[3338]

In the course of history, people have progressively enlarged the range of human beings whose interests they value as their own. Peter Singer refers to this phenomenon as the 'expanding circle' of altruism.[3339] Many factors have contributed to the phenomenon. According to Pinker, this includes the emergence of the state, the development of world trade, and the increasing role of reason. To this list should surely be added the fact that the world started to function more as a whole.

Smuts understood this concept well. He explained it, in typically holistic terms, as 'the evolution of tolerance:'[3340]

> Primitive man confines his goodwill of his favours to his immediate family or at most his tribal circle. Beyond that lies an alien and hostile world. Everyone beyond the frontiers of that very small world is an enemy, to be treated as such. Gradually and very slowly the frontiers begin to widen, to embrace ultimately the notion of the whole state . . .
>
> [I]t was the re-birth of the human spirit at the Renaissance period which liberated a larger, more tolerant, outlook which we find expressed in the works of Erasmus, Shakespeare and other great writers of the a somewhat later period. The human trail was blazed further by that great Dutchman, Hugo Grotius, who is rightly considered the father of international law, and by other great publicists of his age.
>
> John Locke, the outstanding English philosopher of the 17th century . . . was the first to formulate clearly and to inculcate effectively a policy of toleration for the State; and through the influence of the political circle in which he moved, this policy gradually became the foundation of later English liberalism as it matured during the nineteenth century.
>
> The American Declaration of Independence with its resounding affirmation of fundamental human rights became the inspiration of the French revolution with its ideals of liberty, equality and fraternity.

[3337] Marshall notes that it was widely assumed that the successful operation of the United Nations would depend on great harmony, which 'in the event was so evidently lacking for the four decades or so of the Cold War. Nevertheless, argues Marshall, the Charter has retained its authority. There has not been any serious challenge to its fundamental precepts, either from the founding members or the more than 100 countries which have subsequently become members of the organisation. There is, to use European Community terminology, a significant *acquis onusien*. P Marshall 'Smuts and the Preamble to the UN Charter' (2001) 90 *The Round Table: The Commonwealth Journal of International Affairs* 61.

[3338] See, generally, S Pinker *The better angels of our nature: Why violence has declined* (2011) xxi. The new draft Sustainable Development Goals of the United Nations envisages a significant reduction in all forms of violence and related death rates everywhere. Outcome Document – Open Group on Sustainable Development Goals http://www.sustainabledevelopment.un.org/focussdgs.html (22 October 2014).

[3339] P Singer *The expanding circle: Ethics, evolution and moral progress* (2011).

[3340] As quoted in P Blanckenberg *The thoughts of General Smuts* (1952) 168 - 169.

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> Thus by purely secular and worldly ways the Christian doctrine of human brotherhood and at long last won through and became the programme of the Liberal advance.
>
> During the nineteenth century the principles of liberal toleration in its application to the liberty of the subject, of the press, of religion, etc., became the dominant and accepted view in Western civilization.

Paul Gordon Lauren writes that, the 19th century turned into the 20th 'unleashed as period bursting with discovery, change, development, creativity, energy, and visions.'[3341] Innovations in communication (in the form of the wireless telegraph), and in transportation (sensationally illustrated by the first crossing of the English Channel by aeroplane in 1909), captured the popular imagination.

These innovations began to 'shrink' the globe and change the prevailing construct of 'the world,' as previously-held notions of distance, time, geographical barriers, and national boundaries became nullified.[3342] People and places, once seemingly far away, became closer than ever in history. 'The affairs of the world now interest all the world,' noted one political leader.[3343]

Thus, a world that for millennia was perceived as flat and extended infinitely into all directions, with endless possible permutations, truly became round, with a fixed number of inhabitants, who were settled in their territories, providing a strong incentive to establish a peaceful order.[3344] Global perspectives suggested potential global solutions to common problems.[3345] A tendency developed towards greater accommodation for others who are part of the same communication and normative system.

Smuts' notion of Holism is an uncannily apt description of the creative forces that are unleashed when disparate parts interact with each other to become a whole; and of the forces that drive a new world order of less violence, global trade, interconnectedness, and, indeed, human rights. He was convinced, after all, that we live in a 'friendly universe.'

[3341] PG Lauren *The evolution of international human rights: Visions seen* (2003) 71 - 72. As but two examples, Lauren mentions how visitors to the the 1900 International Exposition saw the 19th 'Century of Steam' transformed into the 20th 'Century of Electricity' before their very eyes. In theoretical physics, the quantum theory of energy and Einstein's theory of relativity opened heretofore unimagined perspectives on mass, time and space. *Ibid* 72.

[3342] *Ibid*.

[3343] Gabriel Hanotaux, French Minister of Foreign Affairs, as quoted in *Ibid*.

[3344] See I Morris *War! What is it good for? Conflict and the progress of civilization from primates to robots* (2014) 80, 81 on 'caging.'

[3345] PG Lauren *The evolution of international human rights: Visions seen* (2003) 72.

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We live in the age of Holism. Smuts's view of evolution emphasised the co-operative values of civilisation, as opposed to the grim outlook of mechanistic science.[3346] Taken to its logical conclusion, Holism and a view according to which life is a zero sum game are conceptual opposites. In essence, the first encapsulates the concept of 'me *and* you,' while the latter emphasis 'me *or* you.' In Smuts' holistic world, watertight distinctions can no longer be drawn between narrow self-interest and the general good - everything becomes subsumed in one whole.

From the perspective of those who lived 100 or 200 hundred years ago, at the time when Singer's circle covered little more than their own immediate self-interest, those individuals who widened the circle were bound to be viewed as progressive, or in Smuts' case in the eyes of Afrikaner nationalists who perceived him as going too far, treacherous. Viewed from the current perimeter of the circle, those same people may be regarded as narrow-minded and bigoted, because they did not go far enough.

Smuts crossed more bridges that most in expanding the circle, and he helped to lay the foundations for a world body that would pursue sustainable world peace based upon human rights - a notion that Smuts himself barely understood at the time. Therein lies his genius. His monumental shortcoming lies in his inability or unwillingness to chart the same course for his own country regarding the issue of race. This proved to be a bridge too far.

4. Smuts' paramount contribution

The inclusion of human rights provisions in the Charter changed the parameters of the debate. It introduced radical new principles into international law and world politics, thereby seeing the world on a path that would be remarkably different from the immediate past.[3347]

Herein lies Smuts' paramount contribution. Firstly, Smuts insisted on the fundamental *connection between human rights and peace.* This connection became the bedrock and has remained central to the United Nations' *modus operandi* in pursuing world peace over the course of the past 70 years.

[3346] B Schwarz *Memories of empire volume 1: The white man's world* (2011)

[3347] F Jhabvala 'The drafting of the human rights provisions of the UN Charter' (1997) 44 *Netherlands International Law Review* 2.

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Secondly, Smuts used his international stature to ensure that human rights became binding law. By including the phrase 'fundamental human rights' in the Preamble of Charter of the United Nations, human rights became part and parcel of the treaty that every state has to accede to in order to become a member of that world body. Acceptance of human rights – at least on the formal level – thus became a precondition for membership in the international community. The Charter became the primary legal foundation of the international human rights project.

In short, Smuts' lasting contribution did not lie in defining the contents of human rights, but in playing a monumental role in the evolution of *human rights from a noble aspiration into binding law*.

Paul Gordon Lauren's profound statement about the participants in the human rights project generally, is especially apt to describe the individual contribution of Jan Christian Smuts:[3348]

> There are times when the visions seen of a world of possibilities provide a far better measure of a person's qualities and contributions than the immediate accomplishments of his or her lifetime. That is, those unique individuals who possess a capacity to go beyond the confines of what is or what have been, and to creatively dream or imagine what might be, sometimes have an impact on history that far transcends their own time and place.

[3348] PG Lauren *The evolution of international human rights: Visions seen* (2003) 1.

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