

History books

Law and peace: The Internationalists by Oona Hathaway and Scott Shapiro

The story of an attempt to legislate away conflict could not be more relevant at this time of rising danger for the liberal world order



Signing the Kellogg-Briand Pact at the Palais d'Orsay in Paris in 1928 © Bettmann Archive/Getty Images

27 MINUTES AGO by: Margaret MacMillan

This has not been a good few months for those of us who believe in a liberal world order committed to peace and mutual interdependence. Globalisation is faltering; maverick states such as North Korea, Russia and Venezuela are flouting, apparently with impunity, long-accepted rules; and the US, which has supported international institutions from the UN to the World Trade Organization, is turning inwards. Are we seeing the end of a system which, for all its failings, has served the world well since 1945?

Realists would say there never can be international order; that nations must survive in a world in which there are no rules and no security save that provided by power. Oona Hathaway and Scott Shapiro, law professors at Yale University, disagree and have come out with a robust defence of liberal internationalism. Ideas matter in human affairs and, they argue forcefully, these in turn have shaped our international institutions, conventions and assumptions.

For centuries, conquest was its own justification. The intellectual father of what the authors call the Old Order was the 17th-century Dutch scholar Hugo Grotius, nicknamed by Henry IV of France “the Miracle of Holland”. Grotius’s basic argument was that if war succeeds, it is just. Further, “the peculiar legal consequences of war” were that you do not have to return what you seized by force. In an attempt to limit the implications of this, Grotius tried to define who could fight wars (states or their recognised agents) and how (there must be formal declarations of war, for example). The Old Order was sustained by the threat and actuality of conflict between states and the first world war was, in this telling, its culmination.

In reaction, write Hathaway and Shapiro, the world moved into a New Order. Conceived by visionary thinkers including the American Sumner Welles and the Polish-British jurist Hersch Lauterpacht, this was enshrined by the General Treaty for Renunciation of War as an Instrument of National Policy in 1928. Better known as the Paris or the Kellogg-Briand Pact, it was signed by over 50 nations including the US (with only one dissenting vote in the Senate), the Soviet Union, Germany, Japan and Britain. Under the pact, aggressive war and the conquest of territory was no longer permissible, though countries could still defend themselves and, indeed, the aggressor nation could be resisted by others since it had put itself outside the law.

When the increasingly nationalistic government of Japan seized Manchuria in 1931 the world, led by the US, refused to recognise the conquest and the new puppet state of Manchukuo. The Japanese were not able to establish a clear title but no one did anything to dislodge them. And if Japan and its Axis partners Germany and Italy had won the second world war, Kellogg-Briand would have been in the dustbin of history and conquest would have again been accepted as a legal basis for seizing territory.

Instead, the principles that had been ineffectually applied in the 1930s acquired legitimacy and teeth after 1945. As a result, argue the authors, most of us have enjoyed an unprecedented period of peace and the amount of territory seized by force has declined precipitously. Some would question whether this can be credited to international laws and norms and not, for example, to nuclear weapons with their threat of global annihilation and the determination of key powers to avoid war. But by and large, we have come to regard conquest as illegitimate, which helps to explain the widespread shock at Vladimir Putin’s seizure of [Crimea](#).

The Internationalists is a fascinating and challenging book, which raises gravely important

The Internationalists

And Their Plan
to Outlaw War



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'The Internationalists: And Their Plan to Outlaw War' by Oona Hathaway and Scott Shapiro

issues for the present. At times, however, the authors' enthusiasm runs away with them. Was the Kellogg-Briand Pact really “among the most transformative events of human history”? Did it start a process that reshaped the world map, catalysed the human rights revolution, and fuelled the rapid growth of international institutions? Was the second world war primarily about the conflict between the Old and the New Orders? Overstating a case doesn't make it better.

The pact represented a decisive break with the past but it did not come from nowhere. Rather, it was the result of a shift of attitudes and ideas that began long before the first world war. Increasingly, war was seen as barbaric and unnecessary, and alternatives such as arbitration and outright pacifism were gaining widespread public support. By the second half of the 19th century, conquest was giving way to ethnicity as

the justification for seizing and holding territory. When Germany annexed Alsace and Lorraine in 1871, a German newspaper echoed a common view: “The alienated children must feel our fist. Love will follow disciplining, and it will make them Germans again.” At the Paris Peace Conference of 1919, self-determination and history, not the right of conquest, were used to claim territory.

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It is undeniable, too, that there have been fewer territorial conquests since 1945, but this does depend partly on how you define them. Stalin did not formally annex the countries of eastern Europe; he certainly treated them as though he had, as well as incorporating territory such as Bessarabia into the Soviet Union. The Chinese seized Tibet by force

and no one has imposed sanctions on them. And war is still used as a means of settling disputes over territory. Think of India-China in 1962 or the long and very costly war between Iran and

Iraq in the 1980s. A similar problem of definition arises with “aggressive” war. Is intervention to carry out regime change or prevent civil strife aggressive? Saddam Hussein or Muammer Gaddafi might say it is.

For all that the world has moved on since Grotius and has largely come to accept that war for conquest is wrong and unjust, we still alas have armed conflict, some backed by powers intervening in internal disputes. We have seen a growth in failed states and unending civil war, whether in the Great Lakes region of Africa, Sudan, Syria or Afghanistan. There is an argument that some of this may in fact be encouraged by the New Order, for when aggressive war is outlawed, the threat of invasion by a predator nation that might force the quarrelling sides together also disappears. Nor have we completely solved the problem of enforcement that challenged the Kellogg-Briand Pact in the 1930s.

Yet perhaps we can still have some optimism about the future. If you believe ideas matter and that views change, and like the authors I do, we have far more international acceptance of the criminality of war and of our common responsibility for each other. Given the state of the world, *The Internationalists* has come along at the right moment.

The Internationalists: And Their Plan to Outlaw War, by Oona Hathaway and Scott Shapiro, *Allen Lane, RRP£30/Simon & Schuster, RRP\$30, 608 pages*

Margaret MacMillan is author of ‘Peacemakers: The Paris Peace Conference of 1919 and Its Attempt to End War’ (John Murray)

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