HELLENIC REPUBLIC
National and Kapodistrian University of Athens
EST. 1837

LAW SCHOOL

POSTGRADUATE PROGRAM.: European and Public International Law
SPECIALIZATION: Public International Law
ACADEMIC YEAR: 2022/24

POSTGRADUATE THESIS

Noack, Charlotte Eleni, Roger Martin
R.N.: 251646830453

Imagined states and a Practice Theoretical approach on statehood- a view from Sèvres

Supervisors:
Names of the supervisors

α) Ilias Plakokefalos

β) Maria Gavouneli

γ) Anastasios Gougourinis

Athens, 08. April 2024

National and Kapodistrian University of Athens

Faculty of Law-LL.M.

Thesis

Imagined states and a Practice Theoretical approach on statehood- a view from Sèvres

Professor: Dr. Ilias Plakokefalos

Student: Charlotte E. Noack

Academic ID 251646830453

Date: 31st September 2023

I. Introduction

‚Fifty states, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality.' The particular decision [is] not of concern here: the point is, that [it] emphasises the possibility, even in a decentralized international system, of legal rights and obligations transcending the principle of consent.'[1]

In international law there are specific debates on legal nuances and the reality of a situation determined by power politics. The two do not always align, but they are in communication. This thesis investigates the communication between the Treaty of Sèvres[2] and the situation in the late Ottoman Empire through through the lens of practice theory.

This thesis argues that the relationship between the law and reality needs not to be ignored and that the dynamics of this relationship are made visible through the lens of practice theory. International law could benefit from the extensive research that has been done in other sciences. In this specific case sociology, the science of the development, structure and functioning of human society. Therefore, the thesis draws partly from history, partly from international law and partly from sociology. The focus was put on a historical event in order to allow a switch between ex ante and ex post perspectives.[3] This seemed necessary in order to get a grasp of the dynamics at play. The arena chosen for this purpose is the late Ottoman Empire and the states that succeeded it. The law that will be discussed is the creation of states in international law. The chosen sociological tool to approach the dynamic between the legal and the political is practice theory. It describes how the rules of society work and influence humans and vice versa. Thus the perspective of practice theory can help to better understand the processes behind the confusion.

Practice theory is a sociological theory stemming from Bourdieu's 'theory of practice', Foucault's 'post-structuralism', Wittgenstein's reflections on 'language games' and Heidegger's 'theory of being-in-the-world'. Practice theory emphasizes not a conscious actor but the practices that govern situation. Thus it is well suited to approach the communication between the legal and the real. In distinction to classical theories of action, which presuppose a conscious actor, practice theory

[1] Reparations Case, 1949 ICJ Rep 174, 185. Found in James Crawford, The Creation of States in International Law (2. ed., 1. publ. in pbk, Clarendon Press 2007) 536.
[2] 709 LNTS 28, 222.
3 William H Dray, Philosophy of History (2nd ed, Prentice-Hall 1993).

assumes that most of our activities are carried out on the basis of implicit knowledge, i.e. knowledge that is not accessible to consciousness. For example, when riding a bicycle, you start to lurch when you start to think about what it is exactly that you are doing. This implicit or practical knowledge necessary for a practice is not acquired by the social actor through explicit learning, but rather by rehearsing in practical dealings with his environment to behave in a certain way.4 In other words, the social actor incorporates certain orders of knowledge5 and reproduces them in his own bodily practices.[6]

Part II will highlight parts of the multi-layered historic situation. The governmentality7 of the Ottoman Empire revolved around the Sultan and Caliph of Islam that gave their millions of subjects a common identity also shared to some extent by the Jewish and Christian minorities.8 'A great deal more was therefore at stake in the Ottoman wars of 1911-23 than the mere disposition of real estate.'9 The Jewish and Christian subjects played a role within the society[10] and were

4 Andreas Reckwitz, 'Grundelemente Einer Theorie Sozialer Praktiken / Basic Elements of a Theory of Social Practices: Eine Sozialtheoretische Perspektive / A Perspective in Social Theory' (2003) 32 Zeitschrift für Soziologie 282, 282.

5 Pierre Bourdieu, '2.3 Habitus, Inkorporierung Und Körperliche Erkenntnis Bei Pierre Bourdieu' in Henrike Terhart, Körper und Migration (transcript Verlag 2014) <https://www.degruyter.com/document/doi/10.1515/transcript.9783839426180.47/html> accessed 25 October 2023.

[6] A second important aspect for the situational perspective of a future action is the imagination , because we do not know the future, we have to imagine it. In order to be able to think of present conditions differently than they are, the future must first be understood as a space of open possibilities for action - an idea that, according to Koselleck, only became established in Europe after 1750 in connection with the concept of the individual, of freedom of action and will, and of political participation in general. Christoph Möllers, *The Possibility of Norms: Social Practice beyond Morals and Causes* (First edition, Oxford University Press 2020) 321–339; After all, thirdly, the acting person must have had the de facto possibility to act differently in the first place. Reinhart Koselleck, *Vergangene Zukunft: zur Semantik geschichtlicher Zeiten* (11. Auflage, Suhrkamp 2020) 144; All the aspects mentioned above - imagination, memory and experiential knowledge - are integrated into the practically acquired tacit knowledge. According to Reckwitz, elements of practical knowledge are interpretative understanding, i.e. the routine attribution of meaning to objects, persons, the self, etc.; methodological knowledge, i.e. how to competently produce a series of actions; and motivational-emotional knowledge, i.e. the implicit sense of what one actually wants or what it is actually about. Möllers 282; This means that the implicit, incorporated knowledge conditions the assessment of possibilities for action and potential experiences. Transferred to the question of the social (and legal) norm, this means that the actor is not necessarily aware of a norm, but nevertheless follows it in the sense of an 'implicit', incorporated knowledge in his practices. This means that practical norms can also emerge relatively independently of explicit individual moral evaluations. Reckwitz (n 4) 131; However, a mere habit or regularity cannot always create a universally valid norm as long as it is not collectively shared and evaluated accordingly. Möllers 273; Möllers.

7 Governmentality is term coined by the French historian and sociologist Michel Foucault in his lectures at the College de France the late 70s. It describes the system of thought regarding the way of governing. For moreinformation see also: Ulrich Bröckling, Susanne Krasmann and Thomas Lemke (eds), Governmentality: Current Issues and Future Challenges (Routledge 2011).

8 Sean McMeekin, The Ottoman Endgame: War, Revolution and the Making of the Modern Middle East, 1908-1923 (Penguin Books 2016) xvii.

9 ibid.

[10] John-Paul A. Ghobrial, 'Towards a New History of Christians and Jews in Ottoman Society 3–5 July 2017, University of Oxford' (2017) 4 Journal of the Ottoman and Turkish Studies Association 419.

doing partly well having trade and relations with western powers. Damascus for example was at that time the showplace of Arab secret societies, French diplomats and Zionists.11 The thesis has focused on the middle east and unfortunately had to leave a lot of relevant circumstances in other regions e.g. the Balkans untouched. Geographically the Ottoman Empire lay between three continents and three oceans and WWI was fought on all of them.12 The atmosphere in this strew of languages, religions and identities changed in WWI. 'Prior to 1911 few of the peoples involved in the populations exchange would even have defined themselves in national terms as Greeks and Turks, but rather as Christians or Muslims'13 After the collapse of the Ottoman Empire the Allied powers introduced the Treaty of Sèvres. Part III of the Treaty defines the successors to the Ottoman Empire. Not all of them are states. The treaty was never ratified and was superseded. Nevertheless it was the tableau with do's and don't's for the Treaty of Lausanne[14], the treaty that was implemented. Exactly because the Treaty of Sèvres failed, the dynamics between the political ideas, the attempts to fit them into a legal framework and the reality become exposed. The states mentioned in the Treaty of Sèvres were not in the same situation in reality and had different future-status: Armenia is a state today, the Hedjaz is nothing that many people have heard of. Thus the failure of the treaty exposes that entities that look the same from the perspective of the Law might not be the same in reality. The treaty attempts to carve out clusters of humans which correspond to the successive states. When reading the treaty inconsistencies in describing those clusters of humans catches the eye. These inconsistencies in the treaties are remarkable and are the subject of the present thesis.

Part III takes a closer look at some of the clauses in the Treaty of Sèvres . It does so in order to pursue the question of why the drafters of the Treaty deemed it necessary for the creation of states to carve out clusters of humans in the first place and then secondly why they were struggling to do so. This second step combines the legal notion of the state and how it developed at interplay with the sociological notions of 'people', ethnicity, and nation. One flaw that this thesis has condoned is that treaty interpretation has the treaty at its starting point, whereas the dynamic between the law and reality does not. While practice theory is a good starting point to analyse the dynamics it does not fully bridge the gap to-, or incorporate the practice of treaty interpretation.

11 McMeekin (n 8) 492.
12 ibid xviii.
13 ibid 489.
14 701 LNTS 28. 12.

Part IV traces the legal concepts around statehood. In particular, there is a relationship between statehood and ethnicity, clearly visible in the names of such states that correspond to ethnicities. At the same time a common ethnicity is not a necessary requirement of statehood. On a third level a state might create an ethnicity as defined in this thesis. For instance Brazil has existed for so long 'Brazilian' can be considered an ethnicity. To further complicate things an ethnicity, or a state can in certain instances also be described as a nation. This thesis attempts to address the confusion. It falls back on the tools of practice theory, where the law alone does not give a satisfying answer for its own inconsistencies. This is attempted in Part V that dives deeper into the realm of theory and reports back on the law.

II. The historical situation leading to the conclusion of the Treaty of Sèvres

> *'In all the cartographical havoc wreaked by the first world war, it is a curious fact that both the most stable and the least stable boundaries were drawn in the former Ottoman Empire.(…) The borders of Kemal's Turkish Republic, forged by blood in the field – not on paper by faraway diplomats - have proved to be just as solid as those of Turkey's south-eastern neighbours are porous.'*[15]

1. The sick man of Europe[16]

'Associate yourselves, Oh ye people, and ye shall be broken in pieces' [17]

The Ottoman Empire existed for the most part from 1299 to 1923 . Its dissolution was declared by Mustafa Kemal, a Turkish nationalist who was born in the city of Salonica, in today's Greece. Before its involvement in the First World War (WWI) the Empire had lost parts of its African territory in the Italian war 1911-1912 as well as Rumelia, the historic name for the Ottoman

[15] McMeekin (n 2) 439, Further on 486. The border between Iraq and Kuwait was drawn by British diplomat Sir Percy Cox as a 'line in the sand'. It was later notoriously crossed by Saddam Hussein. The line was not drawn in consideration of Ottoman Mosul and other Kurdish and Turkish areas that were not meant to be together with predominantly Arab Ottoman vilayets of Basra and Bagdad; of the Sunni triangle near Bagdad and the Shiite holy cities of Najaf and Karbala with the Shiites looking east to Iran and Sunnis looking to Saudi Arabia; and of smaller minorities of Jews and Christians. Serious civil violence began as soon as 1920 and going on today. It must be mentioned though, that the region was also not a peaceful place before 1914.

[16] Ascribed to Tsar Nicholas I of the Russian Empire describing the Ottoman Empire in the mid-19th century. ibid 9.

[17] Isaiah 8:9

possessions in the Balkans, and most Aegean and Dodecanese Islands in the Balkan wars 1912 - 1913. The decision of the Empire to enter the war in 1914 can be understood as a last effort to avoid the decline by using the German ally as a help against powers with concrete interests in the Empire's territory: Russia, Britain and France.[18] The partition of the Ottoman Empire between Britain and France after the war was supposed to have been negotiated by Sykes and Picot and Sazonov in 1915.[19] This gives a false impression because the final peace treaty negotiated in Lausanne was dominated by Mustafa Kemal, who had just defeated Greek forces in Asia Minor and by extension Britain in war between 1919-1922.[20] Sykes and Picots ideas for the Empire's future borders were different. They had negotiated a partition into a French, British and Russian zone.[21] While this idea seems logical enough in the context of French interest in Mosul and British interests in the Mesopotamian oil fields,[22] it is far away from the idea of a state representing the will of 'a people' or external self-determination.

This means in the period after WWI an empire struggling for its position next to other empires dissolved into a number of states and protectorates. Something changed in the conception of people of themselves. This shift was brought about by the events of the time, most prominently the casualties of war. In 1911 about 21 million people lived in the Ottoman Empire. In 1923 only 17 million lived in that geographical region. Turkey had a population of only 13 million.[23] In 1915 Anatolia was ethnically cleansed of Armenians at the orders of Talaat Pasha. Whether this is to be called a genocide is debated.[24] Hundreds of thousands of Greek speaking[25] Christians were

[18] McMeekin (n 8) 495.
[19] This narrative also forgets the role of the Russian agent Sergei Sazonov and the Russian Imperial interests in the north-eastern region of the Ottoman Empire. The Russian Empire cooperated with the Armenians in the Region and the battle for Van. ibid 315.
[20] ibid xvi.
[21] The Russian zones were taken away after a separate peace treaty between Russia and Germans in Brest-Litovsk in 1918. The US were to take up most of the former Ottoman mandates comprising of an area of much of Modern day Turkey. This never happened because the US congress never ratified the agreement. The mandates were then offered to Italy and Greece. ibid 485.
[22] ibid xvii.
[23] ibid 483.
[24] The United Nations Genocide Convention exists only since 1948. Therefor it is questionable whether the term can be applied to events that happened before it was coined. For a different opinion see 'They Can Live in the Desert but Nowhere Else': A History of the Armenian Genocide (Princeton University Press 2015).
[25] Because this thesis calls to question what it means to be of one ethnicity - 'Greek' in this example - it uses the phrase 'Greek speaking Christians in the Ottoman Empire' in order to secure a clear denominator of who is being talked about. This cuts reality short of its complexity. The Karamanlis of Anatolia, were a group that spoke Turkish and shared in a common Anatolian folk culture but maintained a Greek Orthodox religious belief and used the Greek alphabet in their Turkish language writings. Especially in this thesis they would have deserved more emphasis. For more information see also Benjamin C Fortna, 'Multilingualism and the End of the Ottoman Empire: Language, Script,

expelled from Anatolia and hundreds of thousands of Muslims were expelled from the Balkans and Greece between 1913 and 1922.[26] Thousands of Tatar and other Circassian Muslims were deported on the Caucasian front in 1914-1915. Thousands of Greek speaking Christians were deported from Smyrna in 1922-1923.[27] All the above mentioned violence is related to questions of ethnicity.

The Treaties Sèvres and Lausanne were negotiated in light of these circumstances. Unlike Lausanne, Sèvres was never ratified. To trace the ethno-nationalist sentiments in the foundation of the new states it makes sense to look at the failed attempt at delimitation of boundaries, because it shows a reality that did not work, but could have worked in the imagination of the drafters. This allows us to emphasize the relationship between the imagined conception of 'a people' and the invented conception of 'a people' after a state is formed around these people.

The focus of the thesis is on the treaty Sèvres, even though the boundaries negotiated in Lausanne cannot be completely ignored to make the point that the thesis attempts to make. Because Sèvres will be looked at as a Treaty that was not implemented instead needs to be addressed to some extent In retrospect, and within the scope of this thesis, it makes more sense to firstly address the Treaty of Lausanne and then the Treaty of Sevres.

2. The Treaty that did not fail

'These persons shall not return to live in Greece or Turkey without the authorisation of the Turkish Government or Greek Government respectively'[28]

The Treaty of Lausanne was signed on 24th July 1923. The borders of Turkey drawn in the Treaty of Lausanne during the Lausanne Conference between 1922-1923 are still mostly the same today with only one minor modification in 1939. Probably the biggest legacy of the Treaty is the 'principle of collective population transfer'. The compulsory population exchange between Greece

and the Quest for the "Modern"' in Aneta Pavlenko (ed), Multilingualism and History (1st edn, Cambridge University Press 2023) <https://www.cambridge.org/core/product/identifier/9781009236287%23CN-bp-11/type/book_part> accessed 31 October 2023.

[26] McMeekin (n 8) 484.

[27] ibid.

[28] ibid 489.

and Turkey served as a model for the population exchanges by Hitler and Stalin in 1939 and 1941; Stalin's deportation of Crimean Tatars and Chechens and other Circassian Muslims in 1944; mass expulsions of German nationals in Czechoslovakia, Hungary, Poland and Romania after WWII – justified by Delano Roosevelt in 1943 with explicit reference to Lausanne; the partition of India/Pakistan 1948; the expulsion of Arabs from Israel and Jews from Arab countries in 1948[29]; and maybe even on a metalevel for the expulsion of Turkish speaking Muslims from Bulgaria in 1989 and the Armenian cleansing of Azeri Muslims from Nagorno Karabakh.[30]

3. The Treaty of Sèvres

The Treaty of Sèvres was signed on 10th of August 1920. It was not only never ratified, it was in retrospect doomed from the start, a stillborn.[31] Still this thesis takes a closer look at the Treaty of Sèvres and not at the Treaty of Lausanne, that actually settled the peace with the Ottoman Empire after WWI. It does that because the thesis aspires to trace the dynamics between the legal and the real. The ideas that executed in Lausanne were on probation in Sèvres. Sèvres, with all its flaws exposed what was not workable. Certain ideas of Sèvres did not correspond to realty, they failed.[32] These matter could matters could be reviewed and adjusted in Lausanne.[33] Since the focus on this thesis is about the ideas of statehood and how they correspond to reality the Treaty with the ideas that failed has more to offer. The Treaty of Sèvres serves as a template for the ideas on statehood that where not realized. Sometimes the ideas that do not work can say more about reality that the ones that do.[34]

---

[29] Arab Muslims as well as Christians from Israel and Jews from Arab countries. In total up to 500.000 people were uprooted on both sides. See also: ibid 491.
[30] Möllers (n 6) 488.
[31] AE Montgomery, 'VIII. The Making of the Treaty of Sèvres of 10 August 1920' (1972) 15 The Historical Journal 775.
[32] The norms of Sèvres where not realized. See Part V. 4. 'Realisation of Norms' for in-depths analysis.
[33] A particular example being the representatives of what used to be the Ottoman Empire. In the Treaty of Sèvres General Haadi Pasha, Senator; Riza Tevfik Bey, Senator; and Rechad Haliss Bey, Envoy Extraordinary and Minister Plenipotentiary of Turkey at Berne are representing 'Turkey' whereas in the Treaty of Lausanne Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople; Dr. Riza Nour Bey, Minister for Health and for Public Assistance, Deputy for Sinope; and Hassan Bey, formerly Minister, Deputy for Trebizond are already representing 'The Government of the Grand National Assembly of Turkey'.
[34] To cite Lacan, the most honest letters are the ones, that never get posted. Jacques Lacan, 'The Insistence of the Letter in the Unconscious' [1966] Yale French Studies 112.

To better understand the environment in which the ideas of Sèvres were developed a closer look to the situation on the ground is necessary. Sèvres was intended in essence a peace treaty after the surrender of the Ottoman Empire in WWI. The parties negotiating owed the impact of their voice to their military position in the war. The next chapter aims at drawing a more detailed picture of the situation on the ground, without getting lost in too many details or forgetting the global connections.

Imperial Interests

With Russia in civil war, the two dominant empires in the negotiation were Britain and France. They were in competition over controlling territories in the former Ottoman Empire. The armistice with the Ottoman Empire was signed on the British vessel *Agamemnon.* The British Captain refused the French negotiator to board the ship, even though the French officially had the Mediterranean command.[35] Britain had put in the main war effort and was not intending to honour the secret treaty negotiated between the British and French civil servants Sykes and Picot prior to the war.[36] The Sykes-Picot Agreement, ratified in 1916 defined agreed spheres of influence of France, Britain, Russia and Italy in an eventual partition of the Ottoman Empire.[37]

Under the agreement between Sykes and Picot greater Ottoman Syria was to be attributed to France. The coastal area was to be under direct French rule, whereas the inland was to be independently administered by the Arabs.[38] The cities of Damascus, Homs, Hama and Aleppo, which were geographically on the side of independent Arab administration were to become *French zones of influence*. However, from December 1918 onwards the area was occupied by the British, thus challenging French post war dominance in the region.

The British occupied most of Mesopotamia and Palestine which meant that the French could not lay claim on these territories. Even Mosul – a buffer to Russia - that had been a French zone in 1916 was under British control after 1918. When the French landed troops in Beirut, Alexandretta

[35] McMeekin (n 8) 413.
[36] Lloyd George was appearing with the attitude of a bully. David Fromkin, A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East (20. anniversary ed., 2. Holt paperbacks ed, Holt 2009) 737.
[37] The Treaty was leaked by the Bolshevists in November 1917 to attest the imperial interests of France and Britain. Megan Donaldson, 'TEXTUAL SETTLEMENTS: THE SYKES—PICOT AGREEMENT AND SECRET TREATY-MAKING' (2016) 110 AJIL UNBOUND 127.
[38] This meant Hussein and Faisals other sons. McMeekin (n 8) 398.

and Mersin it was not only to beat the Ottoman Empire, but also to maintain dominance against the British allies in the region.[39]

The USA under the presidency of Woodrow Wilson[40] had a dominant position in the peace talks as well. Not only because of the contribution of US troops[41] to the defeat of Germany but also due to financial leverage of U.S. banks over the other Allied Powers.[42] Wilson favored self-determination in his famous14 Points, colonialist and imperialist France and Britain were forced to appease US sensitivities.

Arab self-determination, the French and the British and the Zionists

Under Viscount Allenby's command the British conquered Syria.[43] To satisfy the 14 Point Plan they did so in the name of Faisal I and Arab self-determination [44]. Faisal I became part of the new Arab government in Damascus, although the British troops remained in Damascus.[45]

---

[39] ibid 414.

[40] Wilson was a Nobel Peace Prize laureate in 1919 for his initiative and contribution to the founding of the League of Nations. He presented a 14 Point Program in January 1918 that provided a basis for the Treaty of Versailles, the right of self-determination of peoples and the League of Nations as a tool to prevent future wars. Together with George Clemenceau, David Lloyd George and Vittorio Emanuele Orlando he was a member of the council of four, the heads of states of the most powerful victorious nations of WWI. His replacement by the Republican Warren G. Harding on 4th of March 1921, who won with a clear majority against the democratic candidate James M. Cox, favored by Wilson, changed the US position, interests and attitude towards the future of the Ottoman Empire drastically. Richard H Immerman and Jeffrey A Engel (eds), Fourteen Points for the Twenty-First Century: A Renewed Appeal for Cooperative Internationalism (The University Press of Kentucky 2020) <http://www.jstor.org/stable/10.2307/j.ctv103xdm1> accessed 31 October 2023.

[41] It would deserve further research to look at the ethnicity not only of the soldiers fighting in the US Flag but also under the French and British flag and how this did or did not play a role in the Empires attitude towards those ethnicities. People of African descent fighting for the French Empire in WWI were all called Tirailleurs Sénégalais despite them also coming from other parts of Africa. For more information, see Myron Echenberg, Colonial Conscripts: The Tirailleurs Sénégalais in French West Africa, 1857 - 1960 (1. publ, Heinemann [u.a] 1991).

[42] McMeekin (n 8) 415.

[43] There was also a Jewish Legion supporting the efforts of the British army in the region founded by the Zionist born in Odessa Ze'ev Vladimir Jabotinsky to fight alongside Allenby. Allegedly because Jabotinsky did not trust Lord Balfour. Jabotinsky had been representative of the Zionist Organisation (ZO) in the Ottoman Empire between 1908-1914. During this time he was editor of a Young-Turkish newspaper Le Jeune Turc. Jabotinsky saw action in 1918 in Palestine but was demobilised in September 1919 after complaining to Allenby about the British Army's attitude towards Zionism. For mor detail on Jabotinsky see Hillel Halkin, Jabotinsky: A Life (Yale University Press 2014).

[44] Faisal I bin Al-Hussein bin Ali Al-Hashemi was the third son of the Grand Sharif of Mecca. He was raised in Constantinople and was elected representative of the city of Jeddah in the Ottoman Parliament in 1913. He became a leader of the Arab Revolt against the Ottoman Empire during WWI. With the support of British troops he was ruler of the Arab Kingdom of Syria from March to July 1920. The Syrian National Congress proclaimed him King and thus rejected the French Mandate for Syria. He was exiled after the French invasion. He became King of Iraq under British administration between 1921-1933. See also Ali A Allawi, Faisal I of Iraq (Yale University Press 2014).

[45] Fromkin (n 36) 341.

The French had no interest in losing their grip on the region to the British. To counteract Feisal I they promoted Lawrence of Arabia to be Leader of the Arabs.[46] The Palestinian armies did not join Feisal I's 'Arab Revolt' either but fought as loyal subjects in the Ottoman armies.[47] That was owed to a large degree to the Balfour Declaration. The Declaration contained a letter from the British Foreign Secretary Lord Balfour to Lord Rothschild announcing British support for the establishment of a 'National Home for the Jewish people' in Palestine signed on 2nd November 1917.[48]

In January 1919 Lord Balfour initiated an agreement between Feisal I and Chaim Weizmann, president of the World Zionist Organisation. The Zionists were to recognize Feisal Is claim on Syria in exchange for Arab endorsement of Zionism. This included all necessary measures to be taken to encourage and stimulate immigration of Jews into Palestine on a large scale under the condition of Syrian/Arab independence achieved on the principle of self-determination.[49] It is noteworthy that this agreement promoted the principle of self-determination for Syrian Arabs while at the same denying self-determination to Palestinian Arabs in favor of the establishment of a 'National Home for the Jewish people' under British supervision. Jews - Zionist or not - did not constitute a majority of the population of Palestine. .[50]

On the occasion of Feisal I presenting the case for Arab self-government in Syria on 6th of February 1919 in Paris the French called Feisal 'British imperialism with Arab headgear'.[51] Clemenceau did not even accredit Feisal I for the Paris Peace Conference (Treaty of Versailles) to remind everyone that the Hashemites of Mecca had no prior connection to Syria. Instead he accredited Shrukri Ganem, who spoke for the 'Central Syrian committee'.[52] Ganem had lived in Paris for the past thirty five years. He did not know how to speak Arabic anymore.[53]

---

[46] A French newspaper was the first to publish on Lawrence: Echo de Paris in September 1918. The British glorification of the figure only came later. For more information, see Scott Anderson, Lawrence in Arabia: War, Deceit, Imperial Folly and the Making of the Modern Middle East (1. Anchor Books ed, Anchor Books, a division of Random House LLC 2014).
[47] McMeekin (n 8) 416.
[48] Arthur James Balfour, 'Balfour Declaration'.
[49] 'Brief des Britischen Premierministers MacDonald an Herrn Dr. Weizmann, den Praesidenten der Jewish Agency'.
[50] McMeekin (n 8) 417.
[51] James Barr, A Line in the Sand: Britain, France and the Struggle That Shaped the Middle East (Simon and Schuster 2011) 75.
[52] McMeekin (n 8) 418.
[53] Margaret MacMillan, Richard C Holbrooke and Margaret MacMillan, Paris 1919: Six Months That Changed the World (Random House trade paperback ed, Random House 2003) 391.

This episode alone shows how constructed and dependent on political affectations and interests the idea of 'a people' is.

Woodrow Wilson's Fact Finding Commission

Wilson, representing an US agenda without direct territorial interests in the region, suggested forming a fact finding commission. He argued that if 'consent of the governed'[54] was to be a basis for the organisation of the post war Arab world, to ascertain the 'desires*'* of the inhabitants would be a necessary step. Wilson suggested the establishment of a fact finding commission to disclose the 'desires*'* of the inhabitants of the regions of Palestine, Syria, the Arab countries east of Palestine and Syria, Mesopotamia, Armenia, Cilicia, and perhaps Anatolia.[55] On the basis of this suggestion the Inter-Allied Commission on Mandates in Turkey (King-Crane Commission) was established at the Paris Peace conference in 1919. The Commission was to consist of British, French, Italian and US representatives but everyone except for the US withdrew from the commission. The Commission, consisting of Henry Churchill King and Charles R. Crane, interviewed the local elites. The translators were organized by the British Army. The Commission investigated for the period of less than two months (June and August 1919) in order to 'acquaint itself as intimately as possible with the sentiments of the people of these regions with regards to the future administration of their affairs'[56]. It concluded that the Middle East was not ready to stand alone under the 'strenuous conditions of the modern world' and that the wishes of the

[54] When it comes to the question of 'consent of the governed' there is a second issue that is missing from the debate completely during the debates around Sèvres and Lausanne. The question is not only whether Feisal I or Ganem is the correct representative of the Syrian people, or whether a Syrian people is something that exists a priori, the question is also one of democratic representation. Art. 22 postulates 'peoples not yet able to stand by themselves under the strenuous conditions of the modern world'. At the same time the discussion revolves around whether a Hashemite prince or a Lebanese intellectual, brother to a Young Turk parliamentary in the Ottoman Government (Halil Ganem) who enjoyed a French upbringing and lived most of his life in France were the adequate representatives to speak the truth of Syrian self-determination. Both men are more or less remote from the actual inhabitants of Syria. This gap leaves us to question who the 'people' are whose ability to stand for themselves was being discussed in Sèvres. This of course is owed also to the times and we must remind ourselves that Wilson himself was president of a country that did not give a right to vote to approximately 10% of its population. While women gained the right to vote during that period, in August 1920 racially discriminatory voting practices were outlawed only with the voting Rights Act. in 1965.

[55] Andrew Mango, 'Stanford J. Shaw and Ezel Kural Shaw, History of the Ottoman Empire and Modern Turkey. Volume II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808–1975 (Cambridge: Cambridge University Press, 1977.) Pp. Xxvi + 518.' (1980) 12 International Journal of Middle East Studies 225, 425.

[56] 1.Report, "Future administration of certain portions of the Turkish empire under the mandatory system," March 25, 1919, page 3. Henry Churchill King Presidential Papers, Record Group 2/6, box 128, folder 1 'King-Crane Commission Digital Collection' <https://www2.oberlin.edu/library/digital/king-crane/intro.html> accessed 15 October 2023.

communities was to be rendered administrative advice and assistance by a mandatory 'until such time as they were able to stand alone (Art. 22 League of Nations). Further, the Commission reported unanimous sentiment in favor of an US mandate in Syria and Palestine. This was because the US had not gone to war with Turkey and had no imperial ambitions in the region and thus the power most likely to accept Arab independence.[57] The Commission did not thoroughly investigate neither Cilicia nor Anatolia. Further the Commission was in favor of an independent Armenia. The Armenians represented by Boghos Nubar Pasha (for the Diaspora) and Avedis Aharonian (for the new Republic of Armenia) desired US protection.[58] The US were the only one of the big powers which had the financial capacity and manpower for a long-term occupation of Anatolia, was considered necessary to protect Armenians and other minorities.

An Armenian mandate over Anatolia as a whole under the administration of the US was in discussion. In March 1919 the US was willing to accept to be Mandatory for Armenia, but Wilson was of the opinion that the Turks should also have self-determination.[59] A special government committee headed by former Grand Vizir Izzet Pasha was formed to encourage the US to take over a mandate of the entire Ottoman Empire[60] in order to save it from the Greeks and Armenians. Even Turkish Nationalists warmed to the idea: the Nationalist Congress accepted the US mandate on the condition that it would not violate the country's independence and integrity.[61] Wilson agreed to this in Mai 1919 in Paris. The only thing still necessary was the approval of the Senate.[62] As Wilson had expected the Senate did not vote in favor of a US mandate because the 'people of the US [were] not inclined to accept military responsibility in Asia'.[63] It can be assumed that the lack of imperial interest that made the Senate decline a US mandate in the region was the reason why the US were the preferred mandatory in the first place.

[57] Mango (n 55) 429.
[58] McMeekin (n 8) 420.
[59] ibid.
[60] It would deserve further research to find out which territory was actually referred to by the government committee, whether it included the Suez Canal and what the reaction of British and French was.
[61] Riza Nur, a founding member of Turkish Grand National Assembly voiced that 'if America were to accept the mandate and behave in a just and honest manner, it could within twenty years bring us a degree of development which Turks, left to themselves, would not be able to achieve in a century'. McMeekin (n 8) 421.
[62] ibid.
[63] ibid 422.

The Italians come and go

In 1919 the French took over what had been negotiated to be the Russian zone in the Armistice of Mudros[64] as well as Syria and Cilicia. The French invited the 'Armenian Legion'[65] to participate in the occupation.[66] The British took Mosul and Aleppo. The Italians Ancient occupied Antalya and claimed ancient Roman rule as a 'historic justification'.[67] The Italian administration of Antalya was encouraged by the French because of the friendship between Venizelos and Lloyd George resulting in mistrust towards the Greeks. The Greeks occupied Smyrna.[68] Constantinople was divided between the British, Italians and the French. The Turkish Nationalists stayed quiet, preferring a Greek occupation to an Armenian one. The Ottoman government offered full compliance with the Allied occupation authorities.

In April 1919 the Italian delegation left, protesting that the Allies wanted to give Fiume and Trieste to Yugoslavia. The Greek delegation argued successfully that the Italian occupied areas in the Ottoman Empire should be assigned to Greece.[69] Thus Smyrna was placed formally under Greek occupation in absentia of the Italians in exchange for Greece to forgo any claims on the Black Sea Coast, that featured an extensive Greek speaking Pontic population.

Mustafa Kemal

Because of tensions between the Greek speaking Pontic and Muslim inhabitants in the area at the Black Sea Coast the British Army sent troops in March 1919. Contrary to their expectations, the British instead of demobilizing Ottoman troops encountered troops vastly outnumbering their own.

---

[64] ibid 423 onwards.

[65] The Légion Arménienne was a volunteer unit raised by the French to serve in tge Middle East durin WWI. See also Andrekos Varnava, 'The Politics and Imperialism of Colonial and Foreign Volunteer Legions during the Great War: Comparing Proposals for Cypriot, Armenian, and Jewish Legions' (2015) 22 War in History 344.

[66] McMeekin (n 8) 427.

[67] ibid 424.

[68] ibid 428.

[69] ibid 430 They argued that Italy was violating the right to self-determination on the Greek population of Rhodes, by its occupation of the Island. This violation would be atoned if the Italian occupied areas in the Ottoman Empire were assigned to Greece. This line of argumentation is remarkable for its underlying assumtions about etnicity. The Greek delegation implicitly assumed that self-determination of the Greek population of Rhodes meant to be part of Greece. Further it must have assumed that all the Greek speaking populations to be one entity. Because from the perspective of the Greek population of Rhodes under Italian occupation their situation remained the same whether Greece gained new territories in the Ottoman Empire or not. The argumentation only makes sense if all the Greek speaking populations were regarded as one, as Greece, and that therefor parts of the entity could be added to make up for other parts that were taken away.

Fearing a Bolshevist sweep over the Black Sea, the British High Commissioner appointed Mustafa Kemal as an inspector of the Ottoman Army.[70]

In May 19th 1919 Mustafa Kemal debarked in Samsun.[71] He took charge of the telegraph and organised mass protests and resistance. 'If the enemy had not stupidly come (to Smyrna), the whole country might have slept on heedlessly'. Fellow Turks were called to 'join the revolt of our hearts against the European armies of conquest'. By end of May protests had reached the capital.[72]

When Kemal was ordered to return to Constantinople in June 1919 he refused to come.[73] The Officers of the Ottoman army followed suit in resisting Allied occupation. Between June 19th and June 22nd 1919 they drew up the principle of the (Turkish) National Resistance: *Misak-i-Milli.* They included the indivisibility of the Turkish Nation in areas with Turkish speaking majorities, the refusal to accept a Kurdish or Armenian state, or a Greek outpost in the Pontic Black Sea, Thrace or the Aegean. Further they proclaimed the establishment of an autonomous Turkish representative committee with Kemal as its head.[74]

In October 1919 Wilson as the main counterweight to French and British imperial interests suffered from a severe stroke.

In January 1920 Turkish nationalists surrounded Maras under French-Armenian occupation. After three weeks siege and the most brutal inter-ethnic bloodletting since battle for Van in 1915 the French breach the Allied occupation terms and start negotiating with Kemal.[75] After elections across most of the Ottoman Empire the Ottoman parliament convened January 1920 with a Kemalist-nationalist majority. The French were willing to abandon the peace treaty of Versailles and recognize Kemal in order to keep Syria. In March 1920 Kemal called for national elections[76] and from April[77] on the Turkish Grand National Assembly convened in Ankara. From that point on there existed two quasi sovereigns: the Turkish Nationalists under Kemal in Ankara and the

[70] ibid 431.
[71]The day is celebrated as a National Holiday in Tukey since 1935.
[72] McMeekin (n 8) 431.
[73] Phil Mansel, Levant: Splendour and Catastrophe on the Mediterranean (Yale University Press 2012) 225.
[74] McMeekin (n 8) 432.
[75] ibid 433.
[76] It would deserve further research to find out which territories were eligible to vote under the national elections called for in March 1920.
[77] The exact date was April 23, now celebrated in Turkey as the National Sovereignty Day.

Sultan and Caliph in Constantinople. In order to honour Ottoman and Islamic the assembly treated the Sultan and Caliph as a captive by the Allied occupiers.[78]

Treaty of Sèvres

Meanwhile Arab-Jewish tensions were boiling over in Palestine putting the British under pressure. Churchill had been elected back to Cabinet since 1919 and was tasked as the Minister of War to defend the Greater British Empire and at the same time reduce costs of the military. Thus Churchill suggested the European Powers to renounce jointly and simultaneously all separate interests in the Ottoman Empire other that those that existed before the war. The Greeks were to give up Smyrna, the French Syria and the British Palestine and Mesopotamia (while keeping the Suez Canal). Instead of dividing the Empire into separate territorial spheres of exploitation, the Allies were to combine to preserve the integrity of the Ottoman Empire as it existed before the war and subject that Empire to a strict form of international control.[79] Churchill was opposed by Lloyd George ambitions for an ever larger British Empire. Lloyd George ordered a decisive stance against the Turkish Nationalists.

A new round of massacres of Armenians at Maras gave Lloyd Georges the leverage to convince France to push towards a finalisation of the terms of the Treaty of Sèvres in March 1920. (The Treaty was signed in August). Many of the terms were provocative to Turkish Nationalist sentiments. Especially the future option of a formal secession of Smyrna (Part III Section IV) and Thrace (Part III Section V) to Greece, a fully independent state of Armenia (Part III Section VI)[80], an autonomous Kurdistan (Part III Section III)[81] and Constantinople and the Straights governed by an international commission (Part III Section I and II). The Allied High Commissioners protest this 'draconian peace' that would provoke 'the flight of parliament to Anatolia' and would throw Kemal in the arms of the Bolsheviks. Lloyd George was not responsive and mid of March 1920 British fleet blockaded the Bosporus, landed troops and occupied Constantinople together with the French. They arrested army officers and government ministers sympathetic to Turkish

[78] McMeekin (n 8) 440.
[79] ibid 425.
[80] Because of space created by the Amercian Mandate not materializing, Van, Erzurum, Bitlis and Trabzon - terrtirories that were not formally won in balltle - were attributed to Armenia. ibid 440.
[81] This included a right of the Kurdish people to hold a plebiscide in favour of autonomy under the uaspices of the League of Nations. ibid.

Nationalists. All Turkish newspapers in Constantinople were taken over and the death penalty was imposed for Turkish Nationalist Rebels. In May 1920 the Treaty of Sèvres was handed over to the Ottoman representatives in Versailles.[82] It gave even more legitimacy to the Turkish Grand National Assembly in Ankara. On the 10th of August 1920 Mehmet VI signed Sèvres, but the treaty was not only never ratified by the National Assembly in Ankara, it was not even on the agenda .[83]

III. Inconsistencies in Treaty of Sèvres

The Treaty of Sèvres is the result of an armistice. While this armistice was requested by the Imperial Ottoman Government it was granted not to the Ottoman Empire but to Turkey.[84] The treaty is so full of inconsistencies of this sort, that they become hard to ignore and almost beg the attentive reader to look into matters of ethnicity and statehood. The circumstances of the Treaty‘s drafting were challenging at best. Also the idea of establishing states and protectorates out of a war zone was quite ambitious. This thesis will argue that the inconsistencies were the necessary price to pay for the treaty to represent the messy reality.[85] When the Treaty of Sèvres mentions of human beings it uses an array words to describe and group them. Depending on the context it uses the words ‘persons’, ‘subjects’, ‘nationals’, ‘peoples’, ‘population’, ‘inhabitants’, ‘communities’, and, strangely ‘Soudanese’.[86]. All the above mentioned terms work individually as a way of grouping ‘people’ but when placed next to each other it becomes difficult to comprehend what exactly they define.

[82] ibid 436.
[83] ibid 449.
[84] Preamble to ‘The Treaty of Sèvres, 1920 (The Treaty Of Peace Between The Allied And Associated Powers And Turkey Signed At Sèvres August 10, 1920)’.
[85] See Part V. 5. ‘Collusion of normative orders’ for in-depths analysis.
[86] The term ‘Soudanese’ might seem a bit out of place in this list, but it nevertheless belongs there. This will be discussed in Part III. 2. ‘Nations, states, mandates’.

1. Persons, Subjects, Nationals

`Were one to ask the average peasant in the Ukraine his nationality,´ observed a British diplomat, ´he would answer that he is Greek Orthodox; if pressed to say whether he is a Great Russian, a Pole, or an Ukrainian, he would probably reply that he is a peasant; and if one insisted on knowing what language he spoke, he would say that he talked 'the local tongue.'[87]

While 'Person' is a synonym for a human being, 'Subjects' is a description of persons in relation to a power structure. This power structure must not necessarily be one of the state: there can be subjects of a treaty for example.. 'Nationals' on the other hand narrows the scope of description. It defines persons who are subjects to a nation. Yet here the first inconsistencies appear. For example when we speak of 'British Nationals in 2023' we might assume they are describing a definite number of persons. The ∑ British nationals = all British passport holders. Even for British Nationals in 2023 the case is not that simple. On the official website of the British government there is a section for British nationals but the sub categories do not use the term nationals. They speak of British citizens. The term nationals only appears in two subcategories: 'overseas nationals' and the button describing how to renounce - what is called in this specific point British citizenship or nationality.[88] This is especially interesting given the British colonial past and its changing stance towards citizenship and nationality.[89] The difficulty to position itself in order to define citizenship and nationality that the gov.uk website struggles with, stems from the problematic this thesis wants to address and shed some light on. When we talk of nationals we make to some extent a reference to the nation-state. The Idea of the nation-state is a concept that is not congruent with today's state. Still it haunts todays thinking of what a state is. In everyday language we have no conceptual difficulty talking of British nationals and thinking of British

[87] R Suny, 'Nationality and Class in the Revolution of 1917: A Re-Examination of Categories', Stalinism: Its Nature and Aftermath (N Lampert and G Rittersporn 1932) 12 found in; Orlando Figes, Revolutionary Russia, 1891 - 1991: A History (Penguin Books 2014) 12.

[88] Government of UK, 'Types of British Nationality' (21 August 1923) <https://www.gov.uk/types-of-british-nationality>.

[89] Especially when considering the British Nationality act of 1948 where the British parliament introduced that every citizen of a commonwealth country was also a British citizen. This meant that every Indian or Gambian peasant had the right to apply for a British passport and move to England. As long as this right was not combined with an actual possibility the act remained. This changed with the HTM Empire Windrush carrying 492 Caribbean migrants and arriving at the Port of Tilbury on 21st of June 1948. The topic would deserve further research in the context of this matter but since the focus of this essay is the Ottoman sphere. It cannot be discussed any further.

citizens. gov.uk does not avoid the term altogether but interestingly places it next to topics that have some form of remoteness from the British core: overseas and renouncing nationality. It does not specify whether renouncing British nationality is the same as losing British citizenship. Even today it is unclear whether 'nationals' refers to the state or the nation.

2. Nations, States, Mandates

The difficulties of defining 'British nationality in 2023' are described above. The difficulties exist even though Britain is an established state, one of the founding members of the UN, and a stable defined entity in today's world (some territories in northern Ireland, the overseas territories in the pacific put aside). In the context of the Treaty of Sèvres the situation was different. Sèvres was written towards the end of a war and while the Ottoman Empire was falling apart. It was an attempt to construct lasting peace by creating new states within a forum of multiple interests, multiple languages, religions, political views and personal ambitions. In this situation it was not clear which states existed and which did not. For example at some point there were two delegations to represent what used to be the Ottoman Empire: one representing what would come to be Turkey and one representing what used to be the Ottoman Empire. Which one of the two was the correct representative is a question of political opinion. If the international recognition of a state is taken into account one could use the signatory status of the parties to Sèvres as an indicator of what was recognized as a state at the time. On the one side there are the Principal Allied Powers: the British Empire, France, Italy and Japan. Then there are other Allied Powers: Armenia, Belgium, Greece, the Hejaz, Poland, Portugal, Romania, the Serb-Croat-Slovene state and Czech-Slovakia. On the other side there is Turkey[90]. The Republic of Turkey – as a separate entity to the Ottoman Empire - was recognized as a sovereign state with the treaty of Lausanne. The official proclamation of the Republic in Ankara was on October 29, 1923. This means that the Republic of Turkey, that may have been in the making, was yet to be proclaimed. The Imperial Ottoman Government, that had according to the first page *requested* the peace Treaty, was - to some extent - representing the

[90] 'The Treaty of Sèvres, 1920 (The Treaty Of Peace Between The Allied And Associated Powers And Turkey Signed At Sèvres August 10, 1920)' (n 84) 4.

nationalities[91] which the Treaty attempted to reorder. Syria, Mesopotamia, Palestine etc. were all parts of the Ottoman Empire. They were exactly not parts of Turkey. It is therefore remarkable that Turkey was the other party to the treaty and not the Ottoman Empire. Even more so, if one takes into consideration the internal power struggle and the political divide between the Ottoman Government and Turkish Nationalists at the time.[92] With Turkish Nationalism (in arms) threatening the Ottoman Government, the indifference by the drafters of the Treaty towards the political nuances between Turkey and the Ottoman Empire is interesting.[93] Through the lens of implicit knowledge it becomes clear that the two, Turkey and the Ottoman Empire, were not regarded necessarily as contradictory.

The Treaty of Lausanne only few month later does not include on the allied side Armenia, Belgium, the Hejaz, Poland, Portugal and the Czech-Slovak State. The Hejaz did not exist anymore as a state. The other part is still Turkey, but the Treaty no longer addresses the Ottoman Empire as the other part but rather the Government of the Grand National Assembly of Turkey. It is more consistent not only with the reality of the political situation but also within itself.

The entities and borders that were imagined[94] in the Treaty of Sèvres were Turkey, Armenia, Kurdistan, Smyrna (a city in Turkey but with its sovereign rights exercised by Greece)[95], Syria, Mesopotamia, Palestine, Hejaz, Egypt, Sudan and Cyprus. Some of them are states with the same name and a similar territory today, such as Turkey or Egypt. Mesopotamia is a predecessor of today's Iraq[96] with slightly different borders. Palestine and *the establishment of a Jewish Nation in Palestine*[97] is the cause of debate for a hundred years now. Hejaz and Kurdistan do not exist at all today.

---

[91]This term was chosen in reference to the usage of the term in Yugoslav Constitution.

[92]The representatives of Turkey who signed where General Haadi Pasha (Senator), Riza Tevfik Pasha (Senator), Rechad Haliss Bey (Envoy Extraordinary and Minister Plenipotentiary of Turkey in Berne). It would deserve further research to find out whether and how they were affiliated with Kemal and why they were labelled as Plenipotentiaries of Turkey and not the Ottoman Empire.

[93]It would deserve further research to look into the Travaux Preparatoir of the Treaty. Unfortunatley they could not be accessed.

[94] In reference to Benedict R O'G Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism (Revised edition, Verso 2016).

[95] 'The city of Smyrna and the territory defined in Art. 66 remain under Turkish sovereignty. Turkey, however, transfers to the Greek Government the exercise of her rights of sovereignty over the city of Smyrna and the said territory.' - Art. 69 of the Treaty of Sèvres.

[96]The territory was already called Iraq in the treaty of Lausanne.

[97] Art. 99 'The Treaty of Sèvres, 1920 (The Treaty Of Peace Between The Allied And Associated Powers And Turkey Signed At Sèvres August 10, 1920)' (n 84).

The Ottoman Empire's territorial space was administered with an imperial ruling structure for more than 400 years. This structure allowed for different 'peoples' to co-exist[98] and interact that spoke different languages, wrote in different languages, practiced different religions, and identified as belonging to different ethnicities. Yet those differences were not clear cut. The most common languages in the Ottoman Empire were Ottoman Turkish, Arabic and Persian. Ottoman Turkish was spoken by most of the Muslims in the Ottoman Empire with the exception of the Muslims in Albania and Bosnia, North Africa, Mesopotamia and the Levant. Only in Anatolia the Ottoman Turkish speaking Muslims were the majority. In the end of the 19th century Ottoman Turkish also displaced Persian as the language spoken by the high court and the government. Arabic was not only spoken regionally but also served as the language of legal and religious affairs. Partly the three languages overlapped within the bureaucracy. Other languages were spoken too and also partly overlapping. In the Balkan peninsula the majority of the people spoke Slavic, Greek or Albanian, but Ottoman Turkish and Romance dialects were spoken as well by big communities. While the majority in Anatolia spoke Ottoman Turkish, Armenian, Kurdish and Aramaic languages were spoken too.[99] Ottoman Jews mostly spoke Ladino/Judezmo which borrows from the Spanish language.[100] Not to forget the vast difference in the dialects of Arabic compared to high Arabic that exists only in writing. It is no coincidence that the modern Turkish language as well as the Hebrew were invented from ancient roots to create a (invented) common determinator for 'a people'.[101] A different but not less complex account could be given of religion and family law e.g. Christians. Because the Court of the Empire was Muslim and in Islam all family law is handled by the religious institutions, Christians churches in the Ottoman Empire invented legal functions that did not exist as function of the church elsewhere.[102] Class, wealth and education remixed divides created by language and religion.[103] When these structures of imperial administration stopped functioning is a matter of historical debate, but the sick man of Europe has been sick before the beginning of WWI.

---

[98] The co-existence was not necessarily peaceful. John-Paul A. Ghobrial (n 10).
[99] Rhoads Murphey (ed), Imperial Lineages and Legacies in the Eastern Mediterranean: Recording the Imprint of Roman, Byzantine and Ottoman Rule (Routledge 2017) 115.
[100] David M Bunis, 'Judezmo: The Jewish Language of the Ottoman Sephardim' (2011) 44 European Judaism 22.
[101] Geoffrey L Lewis, The Turkish Language Reform: A Catastrophic Success (Repr, Oxford Univ Press 2002).
[102] Theodore Papadopoullos, 'Orthodox Church and Civil Authority' (1967) 2 Journal of Contemporary History 201.
[103]It is noteworthy that the Turkish Nation was founded as a successor of the Ottoman Empires territory in predominantly Anatolia. Yet the Turkic ethnicity has its roots on a different geography. The Organisation of Turkic States (OTS) has 5 members: Azerbaijan, Hungary, Turkey, Ukraine and Kazakhstan.

The Ottoman Empire's situation cannot be understood outside the interplay with and the ambitions of other empires, namely Britain, France and Russia who had interests in regions of the Ottoman Empire. The idea of nationalism was fostered and made use of, by other empires in order to destabilize the Ottoman Empire. Regions that opposed Ottoman rule with the idea of becoming independent nations instead ended up as British or French 'zones of influence'.[104]

After the losses in WWI it became inevitable for the Ottoman Empire to 'cut the limbs' in order to preserve the core: to dissolve the Empire into states in order to preserve Turkey. But even before there were attempts to preserve the Ottoman Empire by introducing policy changes. During the Tanzimat era a number of reforms were introduced, among them the first Ottoman constitution in effect between 1876-1878. The reforms aimed at westernisation and thus preservation of the Empire. The idea that a constitution was necessary in order 'to stand with the nations of the world' and to speak on eye level with the civilized nations also existed in Japan at the time.[105]

The second constitutional era began with the Young Turk revolution in 1908. It unsettled the Ottoman power balance even more and worked as a catalyst for the Turkish nationalist movement. Central to the movement – and to the printed press - was the birthplace of Mustafa Kemal was the city of Salonica, today part of Greece. The Turkish nationalist movement was born in a multi-ethnic multi religious city that is today a part of Greece.[106] That Salonica could be both is an example for how much imagination was necessary to designate the Ottoman Empire into different states with different national identities.[107]

---

[104] Lawrence of Arabia and the agreement between the British and French Diplomats are the somewhat misinterpreted textbook example. But more interesting are the ever changing alliances of Arab Tribes during WWI. McMeekin (n 8) 295–314.

[105] In the same period Japan had a similar Idea. It send a commission of scholars to France to study what a Constitution is. After France lost the war to Germany in 1971 Japan was wary to take on a loser's constitution and built its legal system much closer to the German Model. For further reading, see Koresuke Yamauchi, Heinrich Menkhaus and Fumihiko Satō (eds), Japanischer Brückenbauer zum deutschen Rechtskreis: Festschrift für Koresuke Yamauchi zum 60. Geburtstag (Duncker & Humblot 2006).

[106] Devin E Naar, Jewish Salonica: Between the Ottoman Empire and Modern Greece (Stanford University Press 2016); Mark Mazower, Salonica, City of Ghosts: Christians, Muslims and Jews, 1430-1950 (HarperCollins 2004).

[107] The German Kaiser Wilhelm II was a close friend to Abdul Hamid and there was a close exchange between the Ottoman Empire and Germany at the time: The railway concession of 1899 was a considerable German investment, and the terms were tailor-made for the extension of sultanic authority in the more loosely controlled areas of the empire. For example the Kurdish and Armenian populated areas in the southeast and the Bedouin-bandit dominant deserts in Syria. For further research, see Sean McMeekin, The Berlin-Baghdad Express: The Ottoman Empire and Germany's Bid for World Power (First Harvard University Press paperback edition, Belknap Press of Harvard University Press 2012) Germany and Turkey were fighting on the same side in both WWI and WWII. It would deserve further research how the massacre of the Armenians and the population exchange between Greece and Turkey influenced Nazi Germany.

The second constitutional reform had explosive potential because it involved the question of religion and the Khalifat. Abdul Hamid and his embracing of pan-Islam[108] was unattractive to western sensibilities. Within the Empire educated women, Christians and Jews also resented the Hamidian revival of Islam because it threatened the partial equality gained under the Tanzimat period.[109] The constitution did not satisfy civil liberties concerning minorities, freedom of expression or economic restructuring of the Ottoman debts. At the same time it gave rise to anger among the traditional elements of society, especially Muslims.

That the Khalifat included the right of the Sultan to call all Muslims to battle has not been unnoticed by the Western Powers. This was of strategic importance for the Germans and played a crucial role in the decision to invest in the railway.[110] An Ottoman defeat meant also the End of the Khalifat. This importance of the Khalifat is also visible by the eager recognition of Hedjaz, a kingdom within the area of today's Saudi Arabia ruling over Mecca roughly between 1916-1924. It was one of the signatory parties of Sèvres. Further Art. 139 of the treaty stipulates that 'Turkey renounces formally all rights of suzerainty or jurisdiction of any kind over Muslims who are subject to the sovereignty or protectorate of any other State'.

The constitutional endeavors failed to enable the Ottoman Empire to bring together the traditional and the modern elements and give it the strength to survive WWI. Sèvres attempted to satisfy these different interests.

The preamble postulates 'open, just and honourable relations between nations'. While the Treaty was practically dictated to the capitulating Imperial Ottoman government, the preamble postulates 'dealing of organized peoples with one another'. Yet Sèvres also introduced the Mandate System. Art. 22 addresses 'territories inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world'. The states and Mandates were to represent ethnicity of the inhabitants as well as imperial interests of the Allied Powers. Making ethnicity a category to group people that were supposed to live peacefully with each other at the same time created minorities that did not fit in.

[108] The Hejaz railway was planned to reach up to Mecca. This would have allowed Muslim pilgrims to travel by way of Ottoman ports and avoid the British dominated route from Egypt across the Red Sea. See McMeekin (n 8) 29.
[109] ibid 34.
[110] McMeekin (n 107).

The categories for clusters that the treaty offered: a defined territory, an administration of some sort, and a permanent population with a mostly shared ethnicity to refer to are neither static nor a matter of either-or. Salonica is a Greek city, but from the population mix and heritage it could have become Turkish or Bulgarian just as well. There were no geographic territories with clear natural boundaries.

The Treaty uses the triad 'race'[111], language and religion for the norms governing people's lives what this thesis calls ethnicity. The multitude of problems arising from this categorisation are discussed throughout the thesis. The triad appears as a recurring theme through the treaty. For some reason Art. 141 and Art. 165 differ. Art. 141 on the protection of minorities postulates 'race, language, religion, birth and nationality'. Art. 165 postulating the recruitment of the Turkish armed force addresses 'all subjects of the Turkish state without distinction of race or religion'. One article deems birth and nationality necessary additional adjectives the other chooses to exclude language.

Language and religion are clear enough denominators for distinction in today's eyes. This is different for 'race'.

The term 'racial discrimination' is defined in Art. 1 para 1 of the International Convention on the Elimination of all Racial Discrimination (ICERD[112]) as 'any distinction, exclusion, restriction or preference based on 'race', colour, descent, or national or ethnic origin'. The convention does not offer a definition of what 'race' actually is. It uses the same term it seeks to clarify in the explanation thus defeating the purpose of a definition. Aside from that the phrasing implies that 'race' is something different from colour, decent, or national or ethnic origin. In the preamble the ICERD reaffirms that 'discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State'. This thinking is opposite to the ideas of Sèvres. Sèvres wants to

[111] There is extensive research on 'race' and international law. See E Tendayi Achiume, 'Critical Race Theory Meets Third World Approaches to International Law' (2021) 67 UCLA Law Review 1462; E Tendayi Achiume and James Thuo Gathii, 'Introduction to the Symposium on Race, Racism, and International Law' (2023) 117 AJIL Unbound 26; Ediberto Román, 'A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law' (2000) Vol. 33, UC Davis Law Review 1519; Ruth Gordon, 'Critical Race Theory and International Law: Convergence and Divergence' (2000) 45 Vill. L. Rev 827.

[112] International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195, 214 (entered into force Jan. 4, 1969).

divide people by ‘race’, language and religion to bring peace to the former Ottoman Empire. The shift in thinking about ‘race’ that happens between Sèvres and ICERD fits into the narrative of the development of ‘combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among the nations and racial or ethnic groups’ (Art. 7 ICERD) in the 20th century. It would deserve further research to better understand why the handling of the dissolution of Yugoslavia has not been a step back.

Because the idea of humans of different ‘races’ does not correspond to the reality of biology it is difficult to define ‘race’. That Art. 141 adds birth and nationality to the filter of ‘race’, language and religion produces even more confusion. ‘Race’, language and religion is a filter to categorize people within the cultural context, the norms that have made them human. In the context of the treaty of Sèvres this filter of ‘race’, language and religion is used to determine which people where to be grouped together and which were to be made and called minorities that might suffer from mistreatment due to their difference in ‘race’, language and religion. The idea was that all the people sharing ‘race’, language and religion were to live together in one state and thus create stability in the region. The question is why in the case of Art. 141 the two extra categories of birth and nationality are added. It becomes clearer when the telos of the article itself is taken into account. Art. 141 is the second article in Section IV on protection of minorities. There are several articles protecting minorities under specific circumstances that follow more or less the same structure. Art. 141 differs from the other articles. It addresses minorities in general and appears to be more of a human rights clause. The article presses Turkey to assure full and complete protection of life and liberty to all inhabitants of Turkey (para. 1), as well as free public and private exercise of creed, religion or belief (para. 2). The third paragraph proclaims that in case of interference with any of the rights proclaimed in the first two paragraphs, the punishment must be equal and regardless of the creed concerned. Regarded as a human rights clause it is justified to protect not only Ottoman subjects but all inhabitants of the territories concerned. The term inhabitant that appears in Art. 141 is an interesting choice of words. For the term does not cover visitors. Tourism was yet to become a phenomena. Visitors would be businesspeople, delegates of their country or as in the case of the German railway project: both. Their safety was covered through diplomatic protection. Thus narrowing the scope of Art. 141 to inhabitants makes it not really a Human Rights clause. Inhabitants are people that live at a particular place for an extended period of time. Thus the scope of the term also includes people that were born in a different territory or under a different

nationality. The Article does not limit itself to protect people only regardless of 'race', language and religion. It also protects people regardless of birth and nationality. In this Art. 141 stands out to all the other Articles of the Treaty. There must be a reason for this extension. People who distinguish themselves by 'race', language and religion would be covered even with the general formular, thus the extension of adjectives addresses only such people who do not distinguish themselves by 'race', language and religion but who do distinguish themselves by birth or nationality. This brings us to the core practical problem of the attempt of designating people into states. It is undeniable that 'race', language and religion exists. Further it is undeniable that 'race', language and religion can create a powerful political momentum either for self-determination (be it internal or external) or as a scapegoat. At the same time people can fit in more than one category. Taking the perspective of the time, conceptually it seemed workable to place all the Greek speaking Orthodox residents of Anatolia into Greece and the Turkic speaking Muslim residents in Macedonia and Epirus into the new Turkish republic. Within this logic it is less clear what is to be done[113] with the Greek speaking Protestant residents of Anatolia, because a Greek speaking Protestant Ottoman subject was a member of the Greek speaking minority as well as a member of the Protestant minority in the Ottoman Empire. The Greek speaking Ottoman subjects shared a language with people in Greece, but they were still coming from a different place. Persons who are newcomers to a place are still new to that place, bringing with them different norms: different habits, backgrounds, dialects, … even if they share the same language. Hooligans of Panionios - a sports club in Athens, founded in what is today Izmir, and resurrected in Athens after the burning of Smyrna in 1922 - are referencing today the refugee-status and Asia Minor in their anthem.[114] Upon the arrival in Greece even Greek speaking Orthodox refugees from the Ottoman Empire felt were discriminated against.[115] A Greek speaking Protestant former Ottoman subject exchanged to Greece was not only uprooted from their place of origin, he or she was to become a minority under the scope of share 'race', language and religion again.

[113]Looking back from the present, we are aware of what has been done and what the consequences were. The population exchanges were negotiated under the Treaty of Lausanne. Nevertheless the foundation of thought was laid in Sèvres.

[114] 'Από την Μικρά Ασία […] Της προσφυγιάς φανάρι' - ο ύμνος του πανιωνίου.

[115] Symeon Giannokos, 'UNACCEPTABLE SOLUTIONS TO ETHNIC CONFLICT: THE 1923 CALAMITY OF POPULATION EXPULSIONS' (2008) 36 Journal of Political & Military Sociology 19.

To designate a Greek speaking protestant Ottoman subject to Greece creates a hierarchy in the triad of shared 'race', language and religion. It implies that language is a more important factor of unification of 'peoples' than religion. With the 'National Home for Jewish people' (Art. 99) it was the other way around: as long as the religion is the same, language (and 'race')[116] did not matter. Again a constructed hierarchy and only true in theory e.g. discrimination against Jewish immigrants from Soviet Russia or Ethiopia.

Clearly these examples are absurd. One cannot designate humans into nations by shared 'race', language and religion in the first place, or even give language more value than religion or the other way around. In addition this logic ignores the importance of self-identification.[117] Person A and person B can be born to parents of immigrants of the same nation. While person A can identify with the country she was born in, person B might identify with the country her parents came from.[118]

The problem with the attempt of creating a pattern to designate people into their right states is, that categories are constructed; that people fit in more than one category at the same time; that the dominant category is a matter of choice (be it personal or by society) and that this choice can change and shift. This problem is mirrored by the terms the Treaty. It uses categories inconsistently. This fits the reality of the situation in the sense that the reality was also chaotic, but it does not help to put order to the chaos. The categories the treaty uses give the impression

Art. 125 under Part III-Political Clauses, Section XII-Nationality provides a legal definition of 'race'. It addresses persons, habitually resident in territory detached from Turkey, under the borders[119] defined by the treaty.[120] In case persons differ in 'race' from the majority of the population of a territory, Art. 125 entitles them to a right to opt for a different state (not territory). They can select between Armenia, Azerbaijan, Georgia, Greece, the Hedjaz, Mesopotamia, Syria, Bulgaria or Turkey. Of the nine 'states' - named so explicitly in the Article – only Armenia,

[116] It would deserve further research to look into Ethiopian Jews in Israel under the lens of this argument.
[117] I myself did not know that I was a Pole till I began to read books and papers recalls a farmer in 1917 Jan Slomka, 'From Serfdom to Self-Government: Memoirs of a Polish Village Mayor, 1842-1927' (Hassel Street Press 2021) 171.
[118] A closer look to gender and class in this context would deserve further research.
[119] The frontiers of Turkey are defined in Art. 27-35 under Part II. The first section, directly after the Covenant of the League of Nations in Part I. Thus giving emphasis on the importance of borders. The importance and at the same time elusiveness of land borders in international law would deserve further research.
[120] Only Art. 124 offers a similar right to Turkish nationals. The territories discussed in the political clauses in Part III all have individual articles. They All share the same structure only the names of the territories are changed accordingly.

Greece, the Hedjaz and Turkey are signatory parties to the treaty; and only Greece (section V.), Hedjaz (section VIII.), Mesopotamia and Syria (section VII.) are subjects of articles of the treaty (part III-Political Clauses). From the Treaty alone it remains unclear how Azerbaijan, Georgia and Bulgaria gave their consent to this clause. There are other geographical entities mentioned in part III-Political Clauses: Constantinople (section I.), Kurdistan (section III.), Smyrna (section IV.), Armenia (section VI.), Palestine (section VII.), Egypt (section IX.), Soudan (section IX.), Cyprus (section IX), Morocco (section X.), Tunis (section X.), Libya (section XI.) and the Aegean Islands (section XI.). These entities are for an unclear reason not mentioned in Art. 125. This means that if two persons were living in a territory under the scope of Art. 125 and one was of Armenian 'race' and the other of Egyptian 'race', the Armenian was allowed to opt for Armenia, while the Egyptian was not allowed to opt for Egypt.

One possible explanation is that the entities not mentioned in Art. 125 are not states according to the treaty. Palestine, while mentioned in the same section as Syria and Mesopotamia (VII) was to be administered by a mandatory. The mandatory had the task of establishing in Palestine of 'National Home for the Jewish people' (Art. 95). Egypt was to be recognized as a state but as under the protectorate proclaimed by Great Britain (Art 101). Thus territories to be administered under a mandatory are not states according to the treaty (see also Part I to the treaty, Covenant of the League of Nations, Art. 22).

In Art. 107 the Treaty speaks of Egyptian nationals being entitled to British diplomatic and consular protection. Thus the Treaty implies that one can be a national of something that is not a state. But for some reason Art. 125 does not make use of the term national. It does not speak of for ex. Syrian nationals resident in a territory detached from Turkey being entitled to opt for Syria. Instead Art. 125 makes a detour over 'race' and speaks of 'persons, differing in race from the majority of population of a territory being entitled to opt for states 1 to 9 if the majority of that state is of the same race as the person exercising the right to opt'. Clearly there is a connection between 'race' and state made here. There is an underlying assumption that all states mentioned in the article share one 'race' and that this 'race' is the 'race' of the majority of the population.

Some of the states mentioned in Art. 125 did not exist before the treaty. This leads to the assumption that from the perspective of the drafters of the treaty the 'races' already existed and

the different states had to be placed like cookie cutters on top of 'the boundaries which may ultimately be fixed' (Art 98). Art. 125 function was to handle the dough leftovers.

This does not explain why Egyptians were not a 'race' in the terms of the treaty. Why they were nationals despite not getting a state. Sudanese are weirdly not Sudanese nationals but simply 'Soudanese' without an attribute of any kind (Art. 114).

The matter becomes even more complex when religion is fractured in. Art. 95 prescribes the 'establishment of a National Home for Jewish people in Palestine'. It is noteworthy that the scope Art. 95 is not limited to former Ottoman subjects, but addresses the 'Jewish people' all over the world.[121] The *Haskalah* (Jewish Enlightenment) appeared in Europe (Vienna, Paris and Berlin) in the second half of the 19th century and took a national Form. Secularisation and modernisation gave rise to a 'Jewish Nation' whose pillars were Yiddish language and culture.[122] This was an extra-territorial community not sharing a national identity. [123] Traverso calls them a community apart, recognizable and distinct even if their life no longer revolved around religion. The specific features of the 'Jewish diaspora' are textuality, urbanity, mobility, and extraterritoriality.[124] Thus the 'Jewish people' addressed in Art. 95 are not an ethnicity, not necessarily religious and not necessarily Zionist. Not even if they already lived in the territory described as Palestine by the Treaty. Art. 95 para. 2 reads that the 'National Home for Jewish People in Palestine' shall not prejudice the civil and religious rights of existing non-Jewish communities in Palestine. The civil and religious rights of Jewish communities already existing in Palestine[125] are not protected. Palestine is not to be a state, but to be put under the responsibility of a mandatory according to the treaty (Art. 95). The mandatory is responsible for the establishment of the 'National Home for Jewish People' there. This implies that a 'National Home' is something different than a state: it can exist – at least in the theory of the treaty – within a territory administered by a mandatory. Further the Art. 99 uses the terms 'Jewish people', whereas in Art. 99 that concerns the Hedjaz uses the term 'Moslems of every country'. This shows a difference in attitude towards Jewish and

[121] For a detailed analysis oft he relation between Jewish 19th-century historiography of the Jewish people and Nationalism see Shlomo Sand, The Invention of the Jewish People (Pbk ed, Verso 2010).
[122] For further reading: Emanuel S Goldsmith, Modern Yiddish Culture: The Story of the Yiddish Language Movement (Repr, Fordham Univers Press 2000).
[123] For further reading: Simon Dubnov, 'Judaism and History: Essays on Old and New Judaism' (Jewish Publication Society 1958).
[124] Enzo Traverso, The End of Jewish Modernity (David Fernbach tr, Pluto Press 2016) 10.
[125] Charles Glass, 'Jews Against Zion: Israeli Jewish Anti-Zionism' (1975) 5 Journal of Palestine Studies 56.

Muslim faith. Islam is treated as a religion whereas Judaism is not primarily a question of faith and practice. Instead a third terminology is introduced: 'a Jewish people'. In the Treaty there is no Jewish 'race' and neither a Jewish nationality. But apparently a Jewish nationality is imaginable hence the 'National Home for Jewish people'. This indicates that nationality is somehow linked to territory. There can be an Egyptian nationality without an Egyptian state because Egyptian nationals live in what the treaty calls Egypt. Whereas in the logic of the treaty there can be no Jewish nationality without a 'National Home'.

But even though a Jewishness is not a nationality and a 'National Home' does not exist it is nevertheless imaginable. It is imaginable despite the fact that the 'Jewish people' come from different ethnicities (Ethiopian, Ashkenazi, and so on) and speak different languages (Yiddish, Ladino and so on).

This is reinforced by Art. 125. Art. 125 addresses 'people differing in race from the majority of the population' but does not include 'Jewish people'. Thus the Article implies that 'Jewish people' seem to share the 'race' with the majority of population they live in. Different from France or Germany where parts of the Jewish population - the bourgeoisie in particular - grew up speaking French or German[126] most Jews in the Ottoman Empire spoke Ladino/Judezmo or Yiddish.[127]

Zionism was a European lobby strong enough to advocate the 'building of a national home'. This national home is linked to the fact that the Ottoman subjects of Jewish faith - of Sephardic ethnicity or any other - were part of 'a Jewish people'. That Zionism became a popular movement in the late 19th century and a counterpoint to the idea of the Jewish diaspora is related to growing nationalism in Europe and deserves further research.

The wording and content of Art. 125 proves once more that the formation of a state is not neutral to a common identity of 'people'. Religions function in different ways. The emphasis of the function of the religion in Judaism draws much stronger to heritage than to faith compared to Christianity or Islam. It is also much more difficult to become a Jew than a Christian or a

[126] For more detailed information on the languages of the Jewish diaspora in Europe, with an emphasis on the different integration of Jews in Germany and France, see also chapter 2, in Traverso (n 124).
[127] Bunis (n 100).

Muslim[128]. Religion is not merely faith and that when confronted with the 'Jewish People' the determinator of 'race', language and religion loses even the hope of clarity it might give.

IV. Imagined states

'Indeed the Powers have, on many occasions since 1815, and especially at the conclusion of peace treaties, tried to create true objective law, a real political status the effects of which are felt outside the immediate circle of the contracting parties.'[129]

1. Criteria for Statehood

'The birth of a new state is a socio-political process which is to be judged according to the principles of effectiveness.'[130]

In order to get a better grasp of what a state is, the legal criteria for statehood shall be briefly touched upon. There is no international authority to answer the question whether a state is in fact a state or not. However this is a general problem of international law and not particular to statehood.[131] The commonly used criteria for statehood are a) permanent population, b) territory and c) public authority/sovereignty.[132] Public authority has an internal and an external element. Internal sovereignty is the power to determine and uphold the constitution of the state. External sovereignty is the independence from other states. Public authority exists also in situations of chaos, as long as there is a continuation of authority that rules most of the time.

There is a debate about further criteria. There is one criterion based on legality in reference to Art. 53 VCTL. According to this, if the creation of the aspiring state happens by use of force or by

[128] A special emphasis on the Khalifat as something resembling a government structure connected to religion would deserve further research.

[129] LNOJ Sp Supp No 3 (1920), 17: cited with approval of Judge McNair, Status Opinions ICJ Rep 1950 p. 128, 153-4. Found in Crawford (n 1) 536,537.

[130] S Talmon, 'The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?' (2005) 75 British Yearbook of International Law 101, 125.

[131] ibid 127.

[132] Georg Jellineck, Allgemeine Staatslehre (Springer Berlin Heidelberg 1921) 355.

breach of jus cogens[133] it cannot become a state.[134] If statehood is factual it cannot be null and void.[135] There may be illegal states but they are nevertheless states.[136]

Another debated criterion is that a state must be recognized by the International Community.[137] According to the constitutive theory, international recognition of a state is status- creating. Oppenheim writes that a 'state is, and becomes, an international person through recognition only and exclusively'[138]. This positivist view sees international law as a purely consensual system, where legal relations can only arise with the consent of the states concerned.[139] If recognition is status-creating, this means non-recognition is status-preventing. With its status prevented the aspiring state would neither have a right to sovereign equality under Art 2 (1) UN. It also remains unclear how many states of the International Community must recognize a state for it to be internationally recognized.[140]

According to declaratory theory, recognition by the International Community is status-confirming. Whether a state exists or not is a matter of fact. Whether this factually existing state is recognized is a matter of politics. Recognition merely establishes, confirms or provides evidence of an objective legal situation.[141] This means that if a state is considered illegal, it is no less a state. Non-recognition does not have a status-preventing effect.

---

[133] It would be interesting to look into the question whether this might be a circular argument: If jus cogens is peremptory and rooted in natural law then it must be universal and have existed even before the modern states were created. Therefore one cannot argue that it does not matter that the conditions under which most western states were created were not considered jus cogens at the time.

[134] Talmon (n 130) 121.

[135] ibid 130.

[136] ibid 125.

[137] This is not to be confused with the international recognition of a government of a state. Further if recognition has an effect on the legal status of a state, the question arises whether the International Community has the obligation not to deny emerging states their factual status as a subject of international law. The next question that comes up then is if recognition has a status-creating effect and if the International Community may deny emerging states their actual status, whether this denial can be justified by ethics like, for example, the conditions for recognition in the EC Declarations that are based on liberal values.

[138] Robert Jennings, Arthur Watts and Lassa Francis Lawrence Oppenheim (eds), Oppenheim's International Law. Vol. 1: Peace Parts 2 to 4, vol 1 (3. Dr., Longman 1999) 108.

[139] Talmon (n 130) 102 It would be interesting to research whether there is a connection between decolonisation i.e. more and more diverse states and the idea of international law being a consensual system becoming out of date.

[140] Further there is the problem of how to make un-recognized states responsible for their actions under the Law of State Responsibility. Lauterpacht offers a solution to this by making the recognition of an aspiring state mandatory. This however does not correspond to actual state practice. Frowein offers the notion of the de facto regime: a political entity that exercises actual control over territory and calls itself independent, but which is not recognized by other states. Talmon rightout rejects the constitutive theory. Non-recognition by the International Community cannot have a status-preventing effect ibid 105.

[141] ibid 125.

If non-recognition does not have a status-preventing effect, the question arises what effect it does have. If it is not status-preventing, it still is status-denying. Non-recognition is not denying that the state exists as a state, but rather denies the capacity of a state to enter into international relations.[142] A state is born a subject of international law, but its capacity to enter into relations with other states is not the same as an inherent right that other states will actually do so.[143] While for example self-determination is an inherent right, the relations that usually exist between states – be they economic-, trade-, diplomatic relations – are optional and without legal entitlement.[144]

There is an ongoing debate about states emerging *de facto* but not being recognized *de jure*. One could argue in reference to the recognition of Bosnia and Herzegovina that if a state is recognized *de jure,* it is eventually helped to exist *de facto.*

This debate touches exactly upon the point the thesis is trying to make. The political reality and the Law influence each other. Because of that it is necessary to investigate the dynamics of this relationship.

An ongoing problem the thesis has to work with, is that those criteria are the criteria of today.[145] When looking into the past to look through the lens of the present is inevitable. Therefore the look at the past is always tinted. Since this thesis is mainly concerned with the dynamic of the idea of statehood and reality this problem will be treated as part of the given preconditions the thesis is working with. The next section will provide a brief outline of modern developments concerning statehood and international law.

2. Modern developments in the International Arena

'In the 19th century to be a nation-state was seen as a sign of civilization, a necessary attribute to be recognized as a player in the International arena.'[146]

[142] ibid 145.
[143] ibid 148.
[144] ibid 125.
[145] It would deserve further research to look at contemporary debates on statehood. It would be even more interesting to look at the articles of contemporary legal scholars on Sèvres and the questions of identity raised in the Thesis.
[146] For a Japanese perspective: Mark Ravina, To Stand with the Nations of the World: Japan's Meiji Restoration in World History (Oxford University Press 2017).

The Nation and the State

The international organ hosting the states is called the United Nations. A Nation and a State are not the same and not necessarily congruent. Since the Peace of Westphalia in the 17th century, states have been regarded as the cornerstone of the International System.[147] The formal correct word for the members of the UN is states, yet the Organ bears Nations in its title. This shows that there is a relationship between the concept of a nation and that of a state that is not as disentangled as international law's approach towards statehood that ignores the notion of the Nation. Because this thesis researches the dynamics between the legal and the political it places an emphasis on the relationship between the ideas of the Nation and that of the State and how the two, while being different concepts, are influencing each other.

Berman writes about a conflict between 'romantic classical state positivism' and 'liberal nationalism' that shaped international law and argues that the two were actually intertwined. This led to a 'modernist break' in international law that resulted in the state and not the nation or the empire being the main actor in international law.[148] What Berman describes is a process resulting from a dynamic relationship. With other words he is describing on a macro level what this thesis attempts to analyse on the micro example of the Treaty of Sèvres.

The classical approach of international law to the creation of states has undergone several stages of transformation: Why, when, and where states appeared in the international arena is connected to historic and geopolitical developments.

The League of Nations

After the first world war (WWI) there were no neutral powers available to mediate or moderate the terms of the peace settlements by the Entente Powers. Wilson's Fourteen Point Plan shaped the final settlement.[149] Point Fourteen stipulated the founding of the League of Nations.[150]

---

[147] Martti Koskenniemi, 'The Wonderful Artificiality of States' (1994) 88 Proceedings of the ASIL Annual Meeting 22, g.

[148] Nathaniel Berman, '"But the Alternative Is Despair": European Nationalism and the Modernist Renewal of International Law' (1993) 106 Harvard Law Review 1792, 1805.

[149] Crawford (n 1) 516.

[150] 'A general association of nations must be formed under specific covenants for the purpose of affording mutual guaranteed of political independence and territorial integrity to great and small States alike.'

The League of Nations was founded in 1920 with 41 member states. Many of the newly founded states were formed as an organizational alternative to the Empires that broke apart in the war.[151] Point Five stipulated an adjustment of colonial claims and that the interests of the populations concerned must have equal weight with the equitable claims of the governments whose titles are to be determined. From today's perspective equal weight with the claims of the colonizing governments does not seem compatible with the right to self-determination of 'peoples'.

Ethnicity: Artificial distinctions among members of the human community?

The fundamental principles of international law are the promotion of Human Rights and the preservation of peace. When we look at the development of international law we can see shifts in perspectives and attempts to achieve similar goals. If we assume the equality of all human beings, statehood creates artificial distinctions among members of the human community.[152] (Liberal) Nationalism gave rise to the idea of preserving peace by separating populations according to ethnic groups. This went together with granting rights to minorities, because minorities are groups of humans that differ in ethnically from the majority of the population.[153] If all humans are regarded the same, there is no minority.

Categorizing people by ethnicity and protecting not humans but the rights of minorities might be an adequate response to how societies behave. Humans are discriminated against for belonging to a minority. At the same time this implies and affirms that humans are different. Nazi-German racial theories as well as ambitions to reorder the 'races' of Europe have brought the dangers of categorisation of humans into the light.[154]

After this experience proved that categorizing people by ethnicity did not necessarily promote peace, the ideology became less fashionable.[155] This also affected the stance towards Rights of

---

[151] Andreas Wimmer and Min Brian, 'From Empire to Nation-State: Explaining Wars in the Modern World, 1816-2001' (2006) 71 American Sociological Review 867.

[152] Koskenniemi (n 147).

[153] Part IV of Aftab Alam, 'MINORITY RIGHTS UNDER INTERNATIONAL LAW' (2015) 57 Journal of the Indian Law Institute 376.

[154] See for example the secret additional protocol to the nonaggression Pact between Ribbentrop and Molotov signed in Moscow, August 1923, 1939; 'Restructuring Europe's Population' in Martyn Housden, Hans Frank (Palgrave Macmillan UK 2003) <http://link.springer.com/10.1057/9780230503090_8> accessed 10 October 2023; Benjamin G Martin, The Nazi-Fascist New Order for European Culture (Harvard University Press 2016).

[155] For an internal POC perspective of the time the pre-diplomat scientific writings of Peace Prize laureate Ralph Bunche deserve more attention from academia. Found in Gunnar Myrdal and Sissela Bok, An American Dilemma: The Negro Problem and Modern Democracy (Transaction Publishers 1996); Charles P Henry, 'A World View of Race Revisited' (2004) 73 The Journal of Negro Education 137.

Minority. In 1948 the Universal Declaration of Human Rights was proclaimed.[156] This shifted the focus from Minority Rights to the more general Human rights. This was reversed with the break-up of Yugoslavia, where the debate shifted back to the plights of minorities i.e. the Albanian speaking minority in the Serbian province of Kosovo.

This oscillating emphasises between ethnicities of the human community and a general equality of humans has left an impact on other parts of international law, in particular on the right of self-determination of 'people' (Art 1.2 UN Charter).

The principle of self-determination gained prominence at the end of WWI as an essential prerequisite to a lasting peace. It stems from the same source as the protection of minorities.

It was also advocated particularly by Woodrow Wilson who saw self-determination as ‚a way forward for the forgotten peoples of Europe'.[157] The ancient nations of Eastern Europe would prosper in multinational states surmounting their inter-ethnic rivalries through the shared political values of liberal democracy.[158]

There are two types of self-determination, one internal and one external. Internal self-determination is the right of the people of a state to govern themselves without outside interference. Internal self-determination is granted through minority rights. If internal self-determination is denied to 'a people' within a state it can only manifest itself externally through secession.[159]

One of the problems addressed in this thesis is that it is unclear what exactly 'a people' is. Sterio introduces a two part test to help determine what 'people' are. The criteria of the first are objective such as heritage, language or territorial integrity. The second test is subjective to the 'people'. It

---

[156]It would deserve further research to look into the relationship between *uti possidetis*, national identity and Pan African and Pan Arabist movements in the new founded states in Africa in 60s.

[157] Tierney, 'In a State of Flux: Self-Determination and the Collapse of Yugoslavia' (1999) 6 International Journal on Minority and Group Rights 197, 6.

[158] Milena Sterio, 'Implications of the Altmann Decision on Former Yugoslav States' [2004] Connecticut Journal of International Law 2.

[159] The threshold for this remedial secession is very high. There must be gross breaches of fundamental human rights. Further any possible peaceful solution within the existing State structure must be excluded. 'A people' may attempt secession as a form of external self-determination when it is apparent that internal self-determination is absolutely beyond reach. The reasoning of remedial secession can be taken a step further. If external self-determination in the form of secession is only granted in cases where internal self-determination is grossly denied, the seceding state has the obligation to grant the rights that were previously denied. A state that is undemocratic or grossly violating Human Rights cannot fulfil this. Thus remedial secession can only justify the instability it causes when the emerging state respects to some extent Human Rights and democracy. When the state is no longer sovereign over its republics, they can no longer secede from the state, but only succeed the state.

evaluates to what extent a group self-consciously perceives themselves as ‘a people’.[160]

The subjective criterion introduced by Sterio brings to mind norm-creating effect that such an endeavour can have. If the notion of ‘a people’ is introduced over an ethnicity, this can lead to an *ex post* self-consciously perception of themselves as ‘people’.

One of the key problems discussed in the thesis is, that in the case of the Ottoman Empire the objective criteria did not function to carve out a group living on a specific territory. Ottoman subjects were different ethnicities, yet lived on the same territory. Thus the notion of ‘a people’ was difficult to overwrap over the situation at hand. The Treaty of Sèvres by addressing the will of certain ‘people’ influenced those ‘people’s’ chances in conceiving themselves and being conceived as ‘people’.[161]

Yet ‘a people’ is not a necessary criterion for statehood. The criterion for statehood is ‘a permanent population’[162]. At the same time self-determination is a right granted to ‘peoples’. This paradox always arises when new states are being born. The right resulting out of external self-determination is that of an independent state. It is directed at ‘a people’ wanting to decide on its own destiny in the international legal order.[163] Yet to be ‘a people’ is not a necessary criterion of statehood. This creates a paradox in international law: If one is already a state the criterion for one‘s existence is a ‘permanent population’ whereas if one aspires to become a state the criterion is ‘a people’. This results in the somewhat contrafactual outcome that for a state to exist there has to be a somehow ‘permanent population’, but for a new state to emerge a permanent population is not enough: There has to be ‘a people’.

The international legal debate about the formation of states revolves around the question whether the formation of a state is a matter of fact or one of law.[164] For a state to emerge there has to be ‘a people’. This would logically imply that a legal debate was necessary to determine a) whether the existence ‘a people’ is a question of fact, b) what the legal criteria for ‘a people’ are, and c) whether it is compatible with the assumption of equality of the human community to define legal criteria for ‘a people’.

---

[160] Milena Sterio, ‘On the Right to External Self-Determination: “Selfistans,” Succession, and the Great Powers’ Rule’ [2010] Minnesota Jounal of International Law 137, 7.

[161] Crawford disagrees: „The criteria for statehood take priority over other forms of territorial transfer and it may be that [...] ‚anticipatory dispositions‘ merely reflect this. Crawford (n 1) 531.

[162] ibid 52.

[163] Talmon (n 130) 53.

[164] Quoting Oppenheim (1st edition), vol 1, 264, para. 209(1). Found in Crawford (n 1) 4.

Even though it is hard to pinpoint what 'a people' actually is, 'peoples' have not been and are not treated equally[165] In the area of de-colonisation the notion self-determination became global (colonial model) yet there has been a concerted effort by most states to limit self-determination of 'people' to the liberation of European colonies.[166] The UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples from 1960 seems to forbid secession when declaring that any attempt at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the 'Principles and Purposes of the Charter'.[167] That means while the colonial model of self-determination allowed for the independent formation of new states it nevertheless restricted a right to secession.[168] This had the paradoxical effect that 'people' who suffer from and illegitimate, but Non-European, foreign rule, and who aspire to self-government, would not be able to activate the principle.[169]

This proves the dynamic between the legal criterion – in this case 'a permanent population' – and the political reality – in that case that humans have a tendency to organise according to ethnicity. Further the oscillation between Minority Rights and Human Rights shows the shifting within international law to adapt to the current political atmosphere.

---

[165] There is an argument that not all claims for external self-determination are treated the same and that there is a pattern to witch claims become successful. On the topic 'The acceptance of these new recognition rules by the weaker states demonstrates their acquiescence in the new global order of sovereign, more sovereign, and less sovereign states.' Sterio (n 189) 18.

[166] Tierney (n 157) 7.

[167] ibid 8.

[168] The persistent practice is not to recognise an aspiring state as long as the previous sovereign has not given up his title, as for example in the case of the aspiring TRNC which is only recognized by Turkey. A previous sovereign can also lose his title if he no longer exists, as was the case in the SFRY. Under specific circumstances there is a right to secession. Stefan Oeter, 'The Role of Recognition and Non-Recognition with Regard to Secession' in Christian Walter, Antje Von Ungern-Sternberg and Kavus Abushov (eds), *Self-Determination and Secession in International Law* (Oxford University Press 2014) 63 <https://academic.oup.com/book/3811/chapter/145275910> accessed 26 October 2023; The so-called remedial secession. The UN General Assembly Declaration 2625 on Principles of International Law concerning Friendly Relations and Co-operation among States from 1970 continues the trend of talking about Self-Determination in the context of not disrupting the national unity and territorial integrity of a state. However the Resolution provides that territorial integrity is only protected in respect of states possessed of a government representing the whole people belonging to the territory without distinctions as to race, creed or color. This implies that secession is permitted in some cases, even if those instances are not clearly drawn. ibid 3; This means secession from a recognized state exists at least prima facie. (n 160) 25; This prima facie right of self-determination does not necessarily result in a right to secession. It exists only when the people are discriminated against, and being thereby denied their right of self-determination as a group within a state. *The Break-up of Yugoslavia and International Law* (1. publ, Routledge 2002) 67,68; Radan.

[169] Tierney (n 157) 8.

The United Nations

After the Second World War (WWII) the League of Nations was replaced by the United Nations. The Charter was signed by October 1945. The United Nations has grown from its original 51 Member states in 1945 to 193 today. There are also members of the UN that do not have voting powers. Their status as a state is debated. This possibility of member 'states' without voting power brings to mind that the existence of statehood is not zero sum. There is room for in-betweens.

A second wave of new members joined during the cold war. The Soviet Union and the US competed for influence in what was then called the Third World.[170] The climate of two alternative forms of imperialisms - Soviet Russians interpretation of Socialism and US interpretation of Capitalism – competing for influence created a momentum that allowed many colonies of Britain and France to declare independence.

The new-born states joined the UN and the realm of international law.[171] The borders of the newly independent states reflected the colonial boundaries – most of which had been negotiated at the Congo Conference in Berlin in 1884/5. The borders drawn at the Congo Conference had been negotiated by colonizing powers to fit their interests. They had not reflected local ethnicity, language or religion. Nor did they reflect local ethnicity, language or religion in the 1960 either. The administrative language and other particularities, like the educational system were adopted, from the former colonizers and even the borders owed their legitimacy more to colonialist powerplay than to nationalist sentiment. This was justified with a legal principle (*uti possidetis)* according to which when a polity breaks up, in default of a better rule, the old administrative boundaries between the new states ought to be followed. The principle stems from roman civil law and is already applied with the independence of states in the Americas.[172]

---

[170]The term was coined by the French demographer, ethnologist and historian Alfred Savuy in his Article Three worlds one Planet, published in the *L'Observateur* 1952 making a reference to Emmanuel Joseph Sieyes concept of the *Tiers-État.*

[171] Quito Swan, 'Blinded by Bandung?' (2018) 2018 Radical History Review 58; The same did not apply to territories colonized by non-western entities. For example Indonesia was hosting the Bandung-Conference in 1955, the first inter-state conference aimed to promote African-Asian economic and cultural cooperation and to oppose colonialism and neo-liberalism by any nation. The conference was the first step towards the creation oft the Non-Aligned movement. The 29 countries that participated represented 54% of the world's population at the time. Yet two territories incorporated violently into Indonesia after western colonialization: West Papua from the Dutch in 1962 and East Timor from the Portuguese in 1975. Only East Timor gained independence and only in 2002. The handling of non-western colonialisation in the sphere of International Law deserves further research. For further information also Sterio (n 189) 7.

[172] Enver Hasani, 'Uti Possidetis Juris: From Rome to Kosovo' (2003) 27 The Fletcher Forum of World Affairs 85, 86.

In the 1990s after the implosion of the Soviet Union and the breakup of Yugoslavia many new states (re)emerged. There the attempt by the global community and the EC in particular was to guide a democratic and peaceful process of separating the Federation of Yugoslavia according to ethnic groups or what the Yugoslav Constitution calls 'nations'.[173] The borders of the new states were to be drawn according to the federated entities of Yugoslavia, again referencing *uti possidetis.* This resulted in war. The recognition of Kosovo in 2008 contradicted that principle. Kosovo had an ethnic Albanian majority but was a sub-federal unit of the Serbian Republic under the constitution of Yugoslavia.[174] This meant that according to the principle of *uti possidetis* it was part of Serbia. The international community first insisted on- and then tossed aside the principle of *uti possidetis* in a timeframe of 30 years and both cases counteracted the expressed interest of Serbia.

This is but one example how the concept accompanying statehood in international law is ambiguous and changes with the circumstances that states emerge in.

3. Imagining territorial dispositions

'Europe alone has the power to sanction independence. She has then to ask herself under what conditions she will adopt that important decision.'[175]

When discussing the Treaty of Sèvres and the State or entities approximating to states emerging out of the Ottoman Empire self-determination is not really the legal tool to describe what happened. The Treaty of Sèvres and later the Treaty of Lausanne were negotiated by the Allied Powers. There is sufficient practice of international powers bringing about territorial change and creating new

[173]The SFRY was a federation in a multi-ethnic, multireligious region historically part of different empires. Its constitution of 1974 incorporates these tensions and makes a distinction between the Nations, the Republics and the Nationalities of Yugoslavia. The Nation according to the SFRY constitution are the people who belong to an ethnic group, like Croats or Slovens. The Republics are the geographically defined federal units. The Nationalities are the members of ethnic groups that do not correspond to a federal unit of the SFRY but whose native countries border on Yugoslavia, like Albanians in Kosovo for example.

[174]*Constitution of the Federal Republic of Yugoslavia*, April 1992, available at: https://www.refworld.org/docid/3ae6b54e10.html [accessed 31 October 2023]

[175] Protocols of the Berlin conference (1878) 69 BSFP 982 Henry Munro, 'The Berlin Congress' (Legare Street Press 2022) 33.

territorial entities.[176] This international practice creates problems in its relation to the legal principles of equality and consent,[177] that cannot be addressed in the context of this thesis.[178] Crawford calls this practice the 'exercise of international dispositive powers'.[179] He elaborates on three general areas of such power being exercised: by means of multilateral acts or treaties; through a more or less organized practice of collective recognition; and by standing international organisations.[180] The Treaty of Sèvres falls into the first category. It stands in a long line of treaties that included dispositive elements.[181] There is also disposition anticipatory of peace treaties. The formal peace treaty is deferred and the issues are dealt with on an ad hoc basis. This means the legal basis of the dispositions is generated before the formal peace treaty which affects the rights of the defeated or third states.[182] Sèvres is a peace treaty and per definition cannot fall under this category. But precisely because it was never ratified, many of the points of Sèvres do fall under the category of anticipatory disposition. This concerns e.g. the creation of Armenia. Armenia was included in Sèvres but omitted from Lausanne after Armenia's reincorporation into Russia. Another case of anticipatory disposition is the Hejaz, which was listed as an original member of the League of Nations by the Treaty of Versailles.[183] The Hejaz did not ratify Versailles. It was an allied power in the Treaty of Sèvres and devoted a section in the political clauses. 1921 it was united with the Nejd under King Ibn Sa'ud as the Kingdom of Hejaz, Nejd and Dependencies. After 1932 it was called Saudi Arabia.[184] The third example of anticipatory disposition found in

[176] Crawford (n 1) 504.
[177] Alfred P Rubin, 'International Law in Historical Perspective. By J. H. W. Verzijl. 2 Vols. Vol. I: General Subjects . Pp. Xii, 575. Index. Fl. 62.50; Vol. II: International Persons , Pp. Xii, 606. Index. Fl. 65. Leiden: A. W. Sijthoff, 1968, 1969.' (1970) 64 American Journal of International Law 448, 97–104; Ian Brownlie, Principles of Public International Law (6th ed, Oxford University Press 2003) 121.
[178] One could argue that the Ottoman Empire was not a state in the sense of the basic principle of international law. Crawford does not make a distinction between state, empire and nation in his argument and references. Crawford (n 1) 505.
[179] ibid 504–564.
[180] ibid 505.
[181] The Congress of Vienna (1815); the Concert of Europe (1815-1848); the Treaty of Paris (1856); the Congress of Berlin (1878) which offers "one of the most extreme cases of the concerted action of the Great Powers, taking and carrying out decisions affecting, the smaller nations without their consent (Lande 1947 62 Pol SQ 258, 265); the conference of Berlin (1884-1885), the international government of Crete (1897-1913); the Act of Algeciras (1906); the Treaty of London and the creation of Albania (1913); other settlements of WWI; the settlements of WWII; and since 1945 the settlements of Germany (1990); Cambodia (1991); and Bosnia and Herzegovina (1992-1995).
[182] Crawford (n 1) 530.
[183] Treaty of Versailles Annex to Part I
[184] Madawi Al Rasheed, A History of Saudi Arabia (2nd ed, Cambridge University Press 2010) 43–71.

the Treaty of Sèvres are the Mandates.[185] The Mandate system under Art 22 of the Covenant[186] was established in 1919 and a result of Wilson's point Five: the 'free, open-minded and absolutely impartial adjustment of all colonial claims'. The territory involved next to the former Ottoman Empire was Germany. The territories were divided into three categories – 'A' Mandates over Syria, Mesopotamia and Palestine[187]; 'B' Mandates in Central Africa; and 'C' Mandates in South West Africa and the Pacific[188]. The Mandates were assigned by the supreme council on 7th May and 21th August 1919[189] and thus before the signing of the Treaty of Sèvres on August 10th 1920 and prior to the Ottoman capitulation and Turkeys relinquishment of the territories. Because Sèvres was never ratified the 'A' Mandates were allocated to France and Great Britain by the supreme Council at San Remo on 25th of April 1920.[190] Only in September 1923 in Art 16 of the Treaty of Lausanne[191] Turkey officially renounced all territories outside its new boundaries.[192]

V. Social norms and legal norms

Möllers has offered in his book 'The possibility of Norms' a specific practice theoretical analysis of law. Möllers does not fundamentally distinguish the legal norm from the social norm reproduced by practice. He argues that the legal norm rather is a special form of formalization of the social norm. Social and legal norms thus merge into each other. While Möllers writes about legal norms within the context of a state, nothing speaks against applying the theory to international law. Especially considering the fact that international law as a decentralized system without a superordinate constitution operates much closer to the social norm than to the legal norm. Four characteristics of norms are to be examined more closely: norms as artefacts, application of norms, formalisation of norms and realisation of norms. This examination leads to the conclusion that the inconstencies in the Treaty of Sèvres derive from a collusion of normative orders

[185] Crawford (n 1) 530,531.
[186] The Covenant of the League of Nations was contained in the Treaty of Sèvres as well as in all the other peace treaties except for Lausanne.
[187] In Art. 94-97 Treaty of Sèvres and thus never ratified.
[188] Former German overseas Territory, renounced in favor of the principal Allied and associated Powers by Germany in the Treaty of Versailles Art 119.
[189] Charles Seymour and HWV Temperley, 'A History of the Peace Conference of Paris' (1925) 30 The American Historical Review 369, 503.
[190] ibid 505.
[191] Ratified by Turkey on 31. March 1924.
[192] 24 July 1923, 117 BFSP 543, 28 LNTS 11.

1. Norms as artefacts

This thesis argues that norms are artefacts of social practices. Social practices are social in the broadest sense, meaning that they need not have an 'intersubjective'[193] or communicative structure, but also include 'interobjective activities'[194] and 'technologies of the self'[195] Practices thus involve not only other human actors, but also artefacts and spatial orders. This thesis assumes that legal norms are such artefacts. It will call the general rules of groups social norms and the rules within the legal framework legal norms. The spatial order, for example, that includes the legal norm of statehood is international law.

Certain artefacts must be present for a particular practice to be formed, performed and reproduced (A bicycle being the artefact to the practice of cycling for example, or statehood being the artefact to distinguish states). These artefacts are neither exclusively objects of contemplation and cognition, as classical philosophy of consciousness assumed, nor forces of a physical compulsion. Rather, they are objects of a meaningful use. In order to deal with artefacts in a meaningful way, a specific practical know how is required, which is not completely prescribed by the artefact itself. *Opinio juris* and states practice international law when ascribing statehood. A certain know-how is necessary to do so in a meaningful way, but if statehood was a matter of fact ascribed by an international authority,[196] there would and could be no *opinio juris* and state practice on the matter. However, the facticity of the artefact does not allow for any arbitrary use or understanding. Principality of Sealand, for example, is not seriously considered to be a state. In this sense, certain possibilities and impossibilities of action and thus social norms are always inscribed in the artefacts.[197]

There is no fundamental difference between the legal norm and the social norm reproduced by practice. Rather, the legal norm is a special form of formalization of the social norm. Social and legal norms thus merge into one another. Transferred to the question of the social (and legal) norm,

---

[193] Niklas Luhmann, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (18. Auflage, Suhrkamp 2021).
[194] Bruno Latour, 'On Interobjectivity' (1996) 3 Mind, Culture, and Activity 228.
[195] Michel Foucault and others (eds), *Technologies of the Self: A Seminar with Michel Foucault* (University of Massachusetts Press 1988).
[196] Talmon (n 130) 127.
[197] Reckwitz (n 4) 282.

this means that the actor is not necessarily aware of a norm, but nevertheless follows it in the sense of an 'implicit', incorporated knowledge in the actor's practices. This means that practical norms can also emerge relatively independently of explicit individual moral evaluations.[198] However, a mere habit or regularity cannot always create a universally valid norm as long as it is not collectively shared and evaluated accordingly.[199] This is especially visible on the example of statehood. The legal norm of what a state is, merges with the social norms of ethnicity and the conception of a nation.

2. Application of norms

According to Möllers, application of a norm means that the norm is claimed for a situation. In this context, 'claiming' merely refers to the state of referring to the norm in the act of application.[200] When the drafters of the Treaty of Sèvres speak of the Hejaz as a state, or of the Greek speaking Ottoman subjects as 'Greeks' they apply – on the basis of implicit knowledge – the norms 'statehood' or 'Greekness' to the specific situations in the late Ottoman Empire. The Hejaz is a state and the Greek speaking Ottoman subjects are 'Greeks'. However, the fact that one speaks of the application of a norm hides the fact that it is a practice of norm creation, which is carried out on the basis of already existing norms.[201] Assuming the statehood of the Hejaz reflects back on the categories of statehood. If Hejaz is assumed to be a state, the categories of statehood have to be in a way that they include the Hejaz. If Greek speaking Ottoman subjects are Greek, to be Greek must mean something different than being from Greece. It must accommodate also Greek speaking Ottoman subjects. On the other hand, the creation of a norm is in most cases an application of a norm, because in most cases we refer to an already existing norm when creating a new norm.[202] We can assume that the drafters while drafting the Treaty of Sèvres did not intend to influence and shape the criteria of statehood when they imagined Hejaz a state. Neither was their intention to influence the meaning of Greek identity. When they assumed the Hejaz to be a state and Greek

[198] Möllers (n 6) 131.
[199] ibid 273.
[200] ibid 195.
[201] Hans Kelsen and Matthias Jestaedt, Reine Rechtslehre: mit einem Anhang: das Problem der Gerechtigkeit (Studienausgabe der 2 Auflage 1960, Mohr Siebeck 2017) 84–109.
[202] Möllers (n 6) 185.

speaking Ottoman subjects to be Greeks they acted on the basis of implicit knowledge that this was how it was. They were based on their perception of reality while designating people

Möllers, like Agamben, assumes that there is no fixed rule for assessing when an application of a norm 'is appropriate'[203] and that this is not contained in the norm itself. There is no fixed rule whether it was appropriate to assume the Hejaz to be a state or to assume the Greek speaking Ottoman subjects to be Greeks. After the Treaty failed it turned out that the Hejaz was in fact not a state. The application of the norm of statehood on the Hejaz was inappropriate. Whereas the Greek speaking Ottoman subjects to be Greeks were Greeks. The application of the Norm was appropriate.[204] Unlike Agamben[205] Möllers does not believe that the application of legal norms only takes place explicitly in court proceedings. According to Möllers, the unconsciously reflexive observance of a norm can also be understood as an application of a norm. This means that not every addressee has to adopt a normative attitude for a norm to exist.[206] Rather, the norm is part of the tacit knowledge that is routinely applied in practices. Taken to the level of international law, this resonates with the concepts of state practice, custom and the persistent objector. In this model, the issue is not the aspect of concepts that can actually represent the actual world, but what spaces of possibility they open up for practices. Concepts make the possibility explicit and also make space for the norms that refer to this possibility. The work of the International Law Commission can be understood as making the preconceptual norms explicit. The norms, however, already existed before this process.[207] Preconceptual social norms, which are updated by the repetition of practices alone, are possible. According to Möllers, legal norms cannot be preconceptual. When Möllers speaks of legal norms he refers to codified legal norms within the framework of a constitution. This thesis argues that this is not the case for international law. International law is based on the principle of equality of states. There is no constitution that embraces all legal norms. While treaty law might cannot be preconceptual, customary international law is preconceptual *ab initio*.

When applying legal norms, the subsumption of a fact under a norm is never truly possible because of the difference between legal concepts and practices. In order to decide whether one can subsume

---

[203] ibid 190.
[204] This is also the reason why it was necessary to choose a historical example and why it was so interesting to choose a Treaty that failed. Otherwise this point could not have been proven in the example.
[205] As argued in Giorgio Agamben, *State of Exception* (Nachdr, University of Chicago Press 2008).
[206] Möllers (n 6) 198.
[207] ibid 136.

a fact under a norm, that is, 'whether an object that has come within the scope of my view falls under a certain concept'[208] imagination is necessary. A comparison must be made between the concrete object at hand and another object that could also be covered by the norm. Thus, when a norm is applied, it is suggested that subsumption is a logical procedure, but in reality the users of the norm make use of it and thus generate a new norm in practice.[209]

3. Formalisation of norms

From the practice-theoretical point of view, most social norms are implicitly anchored in the 'body knowledge'[210] of the actors. This means that in order to remain valid, they require updating through performative repetition. On the one hand, because they make it clear what the deviation from the norm consists of: the absence of repetition; on the other hand, because repetitions suggest a prognostic quality, i.e. they allow concrete hypotheses about the course of the future. During the existence of the Ottoman Empire different ethnicities lived together under one governmentality. This was regarded as natural, as the norm. That the city of Smyrna had an orthodox Greek speaking majority was nothing out of the ordinary.

However, repetitions of practice are always characterised by a genuine openness and changeability: The repeated application of practice can never be an identical repetition due to its temporal and spatial situatedness and therefore contains the potential of random shifts. A certain uncertainty about the future is thus inherent in practices. With the rise of nationalism and with the collapse of the Ottoman Empire what had been regarded as natural shifted. Suddenly it seemed more normal to exchange entire populations than for different ethnicities to live together. The city of Smyrna became something that *had to be dealt with*. The Treaty of Sèvres *dealt* unsuccessfully with Smyrna in Section VI of Part III of the political clauses.

Formalisation techniques counteract these potential random shifts in practices by creating unambiguity and repeatability. Through formalisation, a normative order defines its own elements and makes them distinguishable from each other and from the elements of other orders.[211] The first

[208] ibid 191.
[209] ibid 277.
[210] Reckwitz (n 4).
[211] Möllers (n 6) 271.

step is to formalise when a norm exists, how it is set or found and who is authorised to deal with it. In the example of Smyrna and the Treaty of Sèvres that means that there are different ethnicities, that it matters that they are different and that the Principle Allied Powers are the ones to find a solution.

Different types of norms depend on an order to varying degrees (legal norms depend on a legal order for example).[212] Formalisation techniques are intended to create unambiguity and, through unambiguity, repeatability. Formalisation does not mean the same thing as bureaucratisation or organisation, but mechanisms that make conceptual distinctions practically manageable. [213]Legal norms are thus to be understood as formalised social norms.[214]

A normative order is a connection between different norms that can be traced back to the same mechanisms.[215] International law can thus be understood as a normative order. A normative order can manage without explicit formalisation - especially since the transition from formalisation to non-formalisation is fluid - formalisation creates a template by which the random shift in practice become visible.[216] As seen with the Treaty of Sèvres in particular but also in international treaties in general that after they are concluded it is not clear whether they will also be applied. The Treaty of Sèvres allowed for certain prognoses of the future. For example in Section VI it postulates that Smyrna is under Turkish sovereignty, but that the exercise of the rights of sovereignty will be transferred by Turkey to the Greek government (Art. 69). This reflected the reality of the Greek troops having occupied Smyrna. But the formalisation had no power to enforce the future prognosed in the Treaty to happen. It merely served as a template to show that what was prognosed in the Treaty did not happen.

Still formalised norms can also have a reality when they are not followed, because formalised norms always also serve as a template.[217] On the contrary - a legal order in which everyone permanently adheres to the law or which preventively prevents any breach of the law is actually no longer a normative order in the practice-theoretical sense, but mere coercion. A certain degree of disorder is therefore required for a legal order to exist.[218]

---

[212] ibid 179.
[213] ibid 272.
[214] It should be noted that a normative order can also manage without formalisation. ibid.
[215] ibid 19.
[216] ibid 273.
[217] ibid 247.
[218] Through this codification, it counteracts the potential of random displacement ibid 31–56; of a practice, making it less unpredictable. The practice must still be produced anew at every moment and cannot be an identical repetition,

4. Realisation of norms

Norms have a prognostic quality. When they are formalized the prognosis becomes clearly visible. It is inherent in a prognosis that it might or might not come true, since the future is always uncertain. That the prognosis, inherent in a norm, does come true, by Möllers is called the realisation of a norm.

Because the realization of a norm is possible, this does not always have to happen. But norms have an expiration date. If statehood is seen as a norm, the recognition of a state is the realisation of said norm.

If realisation never occurs, or if the norm is no longer relevant at the time of realization, the time span of a norm has expired. This can be translated also to the Treaty of Sèvres. The realisation of a Treaty as a whole or of parts of its articles is the application of the Treaty as a whole or in parts. The application of a Treaty starts with its ratification but it does not end there it also has to be implemented. The Treaty of Sèvres was signed by Mehmet VI on the 10th of August 1920 and at that point it was not clear that it would not be ratified. Thus the normative quality of the Treaty only expired when it became clear that it would not be ratified by the National Assembly in Ankara. Möllers calls the time between the beginning of the possibility of the realization of a norm and the expiration of this possibility aspiration gap.[219] What makes the Treaty of Sèvres particularly

but the potential for random displacement is limited. At the same time, norms also change the meaning of an action when it deviates from the norm: The norm gives an action the additional property of conforming to or violating the norm. Jacques Derrida, *Die différance: ausgewählte Texte* (Peter Engelmann ed, Nachdr, Reclam 2013) 109; Without the possibility of breaking the norm, there is no normativity. Möllers (n 6) 120; A 'perfectly' functioning state, which does not require any legally formalized norms, i.e. laws, is therefore not the state of law that can be contrasted with the state of exception.It is rather another form of standstill of the law. A legal order must therefore always operate under the principle of 'goodenough' and laws must be broken in a legal order. From a practice-theoretical perspective, however, it must be doubted that the laws themselves have any force. For laws only suggest the force of law because they formalize already existing normative practices. That the sanctions with which certain laws threaten to be transgressed could be a sign of force is based on the questionable assumption that physical force is an effective means of enforcing norms. ibid 388; The fact that a legal system has to resort to violence testifies precisely to its own weakness, that its law is no longer taken for granted and followed implicitly. ibid 9; For the sake of accuracy, it should be noted at this point the distinction between weak and explicit sanction, which Möllers makes. Every norm contains a sanction in a broad sense, in the sense of its own of its own deviation. Any course of action deviating from the norm's specifications can be described as such and thereby gains a different meaning, than if the norm had not existed. Byung-Chul Han, *Was Ist Macht?* (Reclam 2005) 171; Moreover, a sanction cannot serve to enforce a norm at all, because they only take effect after a norm has been violated. Möllers (n 6) 172; Thus, the sanctioning machinery available to the law does not give it any force either. ibid 173; Möllers (n 6).

[219] Möllers (n 6) 323.

interesting is that it was not even on the agenda of the National Assembly in Ankara. This means that there was no clear date to pinpoint when the Treaty had expired.

The possibility of realization or the expiration of a norm can lie in the indefinite future. There are treaties in international law that only enter into force once they have a specific number of signatory parties. If they become actionable at some point in the future that does not mean that they will also be applied. Thus with those kind of treaties the aspiration gap starts only at the point where the relevant number of parties have signed.

The longer the aspiration gap lasts, the more it is necessary to repeat and update it in practice(s) so that a norm does not expire.[220] If the aspiration gap lasts too long without being updated or realized, the authorization by a normative practice is too far behind to continue to legitimize the norm. At some point Treaties that are not adhered to and whose non-compliance is not sanctioned become irrelevant.

Repeatability also changes the time horizon of a norm. Normative practices that are designed for repeatability formulate an expectation of whether and when compliance with a norm can be expected. Therefore, they define the size of the aspiration gap relatively precisely.[221] Ultimately, the general perception of historical change and society's treatment of time also influence how far the aspiration gap can be extended before the norm is no longer accepted.[222]

5. Collusion of normative orders

What made the Treaty of Sèvres so inconsistent in its use of persons, subjects, nationals, nations, states and mandates is in fact a collusion of norms. The Treaty of Sèvres happened between two relatively formalized spatial orders. Before the Treaty the Ottoman Empire and after a relatively stable conglomerate of states in the Near and Middle East mapped out in the Treaty of Lausanne. Both spatial orders are anchored in normative orders that function by different underlying implicit knowledge. For this to be possible - for as an overexaggerated example the Greek speaking

[220] ibid 328.
[221] ibid 330.
[222] Ultimately, the modern revolutionaries are radical representatives of an enlightenment thinking that aims to replace aims to replace religion with a scientific worldview. But is the belief of radical enlightenment that there can be a sudden break in history after which the errors of history, after which the errors of human society will be abolished forever, is in will be abolished forever, is basically a by-product of Christianity. ibid 2; John Gray, Black Mass: Apocalyptic Religion and the Death of Utopia (Penguin Books 2008).

Ottoman subject of the Sultan, to wake up one day and say 'I am Greek therefore I will live in Greece'[223] - a shift in the norms regulating identity must have happened. This shift did not happen from overnight. Neither did it happen smoothly with one normative order replacing the other. What this thesis suspects that happened was that at some point both normative orders existed simultaneously. Further the thesis argues that this norm collusion is also what brought about the inconsistencies within the Treaty of Sèvres regarding persons, subjects, nationals and so on. The inconsistencies are not proof to a lack of order but rather a collision of different orders with an explicit claim to realization.[224]

VI. Conclusion

This thesis has described the situation in the late Ottoman Empire. It has attempted to show that situations are never clear cut, sometimes arbitrary and always more complex than we can conceive. These ambiguities get lost in legal attempts to clarify reality. The thesis has highlighted the inconsistencies in the Treaty of Sèvres' ambitious attempt to establish states and protectorates out of a war zone. It traces contradicting stances towards matters of ethnicity and statehood. Ethnicity and statehood were put into the broader legal context. Gaps in the interplay between the permanent population as a criterion for statehood and the right to self-determination as a right of 'people' were distinguished. In the last section the thesis applies practice theory more extensively and analyses legal norms as formalised social norms from a practice theoretical perspective. This accentuates that the chaos of the late Ottoman Empire's ethnicities and the Treaty of Sèvres attempt to designate them into states (or similar entities) must be regarded as a collusion of contradicting normative orders. The dissolution of the Ottoman Empire created new normative orders that were compatible with the old normative orders still partially in place. Some of these new normative orders survived, others did not. If the Treaty of Sèvres is regarded as an attempt to formalise colliding normative orders the inconsistencies become logical. Thus practice theory as a tool helps to unearth the dynamics between reality and the law and thus better understand and read the law.

---

[224] Möllers (n 6) 384.

VII. Bibliography

Treaty of Sèvres - 709 LNTS 28, 222

Treaty of Lausanne - 701 LNTS 28. 12

International Convention on the Elimination of All Forms of Racial Discrimination - opened for signature Mar. 7, 1966, 660 U.N.T.S. 195, 214 (entered into force Jan. 4, 1969)

Reparations Case, 1949 ICJ Rep 174, 185.

Constitution of the Federal Republic of Yugoslavia, April 1992, available at: https://www.refworld.org/docid/3ae6b54e10.html [accessed 31 October 2023]

Achiume ET, 'Critical Race Theory Meets Third World Approaches to International Law' (2021) 67 UCLA Law Review 1462

Achiume ET and Gathii JT, 'Introduction to the Symposium on Race, Racism, and International Law' (2023) 117 AJIL Unbound 26

Agamben G and Agamben G, *State of Exception* (Nachdr, University of Chicago Press 2008)

Alam A, 'MINORITY RIGHTS UNDER INTERNATIONAL LAW' (2015) 57 Journal of the Indian Law Institute 376

Allawi AA, *Faisal I of Iraq* (Yale University Press 2014)

Anderson BRO, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Revised edition, Verso 2016)

Anderson S, *Lawrence in Arabia: War, Deceit, Imperial Folly and the Making of the Modern Middle East* (1. Anchor Books ed, Anchor Books, a division of Random House LLC 2014)

Balfour AJ, 'Balfour Declaration'

Barr J, *A Line in the Sand: Britain, France and the Struggle That Shaped the Middle East* (Simon and Schuster 2011)

Berman N, '"But the Alternative Is Despair": European Nationalism and the Modernist Renewal of International Law' (1993) 106 Harvard Law Review 1792

Bourdieu P, ‘2.3 Habitus, Inkorporierung Und Körperliche Erkenntnis Bei Pierre Bourdieu’ in Henrike Terhart, *Körper und Migration* (transcript Verlag 2014) <https://www.degruyter.com/document/doi/10.1515/transcript.9783839426180.47/html> accessed 25 October 2023

‘Brief des britischen Premierministers MacDonald an Herrn Dr. Weizmann, den Praesidenten der Jewish Agency’

Bröckling U, Krasmann S and Lemke T (eds), *Governmentality: Current Issues and Future Challenges* (Routledge 2011)

Brownlie I, *Principles of Public International Law* (6th ed, Oxford University Press 2003)

Bunis DM, ‘Judezmo: The Jewish Language of the Ottoman Sephardim’ (2011) 44 European Judaism 22

Crawford J, *The Creation of States in International Law* (2. ed., 1. publ. in pbk, Clarendon Press 2007)

Derrida J, *Die différance: ausgewählte Texte* (Peter Engelmann ed, Nachdr, Reclam 2013)

Donaldson M, ‘TEXTUAL SETTLEMENTS: THE SYKES—PICOT AGREEMENT AND SECRET TREATY-MAKING’ (2016) 110 AJIL UNBOUND 127

Dray WH, *Philosophy of History* (2nd ed, Prentice-Hall 1993)

Dubnov S, ‘Judaism and History: Essays on Old and New Judaism’ (Jewish Publication Society 1958)

Echenberg M, *Colonial Conscripts: The Tirailleurs Sénégalais in French West Africa, 1857 - 1960* (1. publ, Heinemann [u.a] 1991)

Figes O, *Revolutionary Russia, 1891 - 1991: A History* (Penguin Books 2014)

Fortna BC, ‘Multilingualism and the End of the Ottoman Empire: Language, Script, and the Quest for the “Modern”’ in Aneta Pavlenko (ed), *Multilingualism and History* (1st edn, Cambridge University Press 2023) <https://www.cambridge.org/core/product/identifier/9781009236287%23CN-bp-11/type/book_part> accessed 31 October 2023

Foucault M and others (eds), *Technologies of the Self: A Seminar with Michel Foucault* (University of Massachusetts Press 1988)

Fromkin D, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East* (20. anniversary ed., 2. Holt paperbacks ed, Holt 2009)

Giannokos S, ‘UNACCEPTABLE SOLUTIONS TO ETHNIC CONFLICT: THE 1923 CALAMITY OF POPULATION EXPULSIONS’ (2008) 36 Journal of Political & Military Sociology 19

Glass C, ‘Jews Against Zion: Israeli Jewish Anti-Zionism’ (1975) 5 Journal of Palestine Studies 56

Goldsmith ES, *Modern Yiddish Culture: The Story of the Yiddish Language Movement* (Repr, Fordham Univers Press 2000)

Gordon R, ‘Critical Race Theory and International Law: Convergence and Divergence’ (2000) 45 Vill. L. Rev 827

Government of UK, ‘Types of British Nationality’ (21 August 1923) <https://www.gov.uk/types-of-british-nationality>

Gray J, *Black Mass: Apocalyptic Religion and the Death of Utopia* (Penguin Books 2008)

Halkin H, *Jabotinsky: A Life* (Yale University Press 2014)

Han B-C, *Was Ist Macht?* (Reclam 2005)

Hasani E, ‘Uti Possidetis Juris: From Rome to Kosovo’ (2003) 27 The Fletcher Forum of World Affairs 85

Henry CP, ‘A World View of Race Revisited’ (2004) 73 The Journal of Negro Education 137

Housden M, ‘Restructuring Europe’s Population’ in Martyn Housden, *Hans Frank* (Palgrave Macmillan UK 2003) <http://link.springer.com/10.1057/9780230503090_8> accessed 10 October 2023

Immerman RH and Engel JA (eds), *Fourteen Points for the Twenty-First Century: A Renewed Appeal for Cooperative Internationalism* (The University Press of Kentucky 2020) <http://www.jstor.org/stable/10.2307/j.ctv103xdm1> accessed 31 October 2023

Jellineck G, *Allgemeine Staatslehre* (Springer Berlin Heidelberg 1921)

Jennings R, Watts A and Oppenheim LFL (eds), *Oppenheim’s International Law. Vol. 1: Peace Parts 2 to 4*, vol 1 (3. Dr., Longman 1999)

John-Paul A. Ghobrial, ‘Towards a New History of Christians and Jews in Ottoman Society 3–5 July 2017, University of Oxford’ (2017) 4 Journal of the Ottoman and Turkish Studies Association 419

Kelsen H and Jestaedt M, *Reine Rechtslehre: mit einem Anhang: das Problem der Gerechtigkeit* (Studienausgabe der 2 Auflage 1960, Mohr Siebeck 2017)

‘King-Crane Commission Digital Collection’ <https://www2.oberlin.edu/library/digital/king-crane/intro.html> accessed 15 October 2023

Koselleck R, *Vergangene Zukunft: zur Semantik geschichtlicher Zeiten* (11. Auflage, Suhrkamp 2020)

Koskenniemi M, 'The Wonderful Artificiality of States' (1994) 88 Proceedings of the ASIL Annual Meeting 22

Lacan J, 'The Insistence of the Letter in the Unconscious' [1966] Yale French Studies 112

Latour B, 'On Interobjectivity' (1996) 3 Mind, Culture, and Activity 228

Lewis GL, *The Turkish Language Reform: A Catastrophic Success* (Repr, Oxford Univ Press 2002)

Luhmann N, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (18. Auflage, Suhrkamp 2021)

MacMillan M, Holbrooke RC and MacMillan M, *Paris 1919: Six Months That Changed the World* (Random House trade paperback ed, Random House 2003)

Mango A, 'Stanford J. Shaw and Ezel Kural Shaw, History of the Ottoman Empire and Modern Turkey. Volume II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808–1975 (Cambridge: Cambridge University Press, 1977.) Pp. Xxvi + 518.' (1980) 12 International Journal of Middle East Studies 225

Mansel P, *Levant: Splendour and Catastrophe on the Mediterranean* (Yale University Press 2012)

Martin BG, *The Nazi-Fascist New Order for European Culture* (Harvard University Press 2016)

Mazower M, *Salonica, City of Ghosts: Christians, Muslims and Jews, 1430-1950* (HarperCollins 2004)

McMeekin S, *The Berlin-Baghdad Express: The Ottoman Empire and Germany's Bid for World Power* (First Harvard University Press paperback edition, Belknap Press of Harvard University Press 2012)

——, *The Ottoman Endgame: War, Revolution and the Making of the Modern Middle East, 1908-1923* (Penguin Books 2016)

Möllers C, *The Possibility of Norms: Social Practice beyond Morals and Causes* (First edition, Oxford University Press 2020)

Montgomery AE, 'VIII. The Making of the Treaty of Sèvres of 10 August 1920' (1972) 15 The Historical Journal 775

Munro H, 'The Berlin Congress' (Legare Street Press 2022)

Murphey R (ed), *Imperial Lineages and Legacies in the Eastern Mediterranean: Recording the Imprint of Roman, Byzantine and Ottoman Rule* (Routledge 2017)

Myrdal G and Bok S, *An American Dilemma: The Negro Problem and Modern Democracy* (Transaction Publishers 1996)

Naar DE, *Jewish Salonica: Between the Ottoman Empire and Modern Greece* (Stanford University Press 2016)

Oeter S, 'The Role of Recognition and Non-Recognition with Regard to Secession' in Christian Walter, Antje Von Ungern-Sternberg and Kavus Abushov (eds), *Self-Determination and Secession in International Law* (Oxford University Press 2014) <https://academic.oup.com/book/3811/chapter/145275910> accessed 26 October 2023

Papadopoullos T, 'Orthodox Church and Civil Authority' (1967) 2 Journal of Contemporary History 201

Radan P, *The Break-up of Yugoslavia and International Law* (1. publ, Routledge 2002)

Rasheed MA, *A History of Saudi Arabia* (2nd ed, Cambridge University Press 2010)

Ravina M, *To Stand with the Nations of the World: Japan's Meiji Restoration in World History* (Oxford University Press 2017)

Reckwitz A, 'Grundelemente Einer Theorie Sozialer Praktiken / Basic Elements of a Theory of Social Practices: Eine Sozialtheoretische Perspektive / A Perspective in Social Theory' (2003) 32 Zeitschrift für Soziologie 282

Román E, 'A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law' (2000) Vol. 33, UC Davis Law Review 1519

Rubin AP, 'International Law in Historical Perspective. By J. H. W. Verzijl. 2 Vols. Vol. I: *General Subjects* . Pp. Xii, 575. Index. Fl. 62.50; Vol. II: *International Persons* , Pp. Xii, 606. Index. Fl. 65. Leiden: A. W. Sijthoff, 1968, 1969.' (1970) 64 American Journal of International Law 448

Sand S, *The Invention of the Jewish People* (Pbk ed, Verso 2010)

Seymour C and Temperley HWV, 'A History of the Peace Conference of Paris' (1925) 30 The American Historical Review 369

Slomka J, 'From Serfdom to Self-Government: Memoirs of a Polish Village Mayor, 1842-1927' (Hassel Street Press 2021)

Sterio M, 'Implications of the Altmann Decision on Former Yugoslav States' [2004] Connecticut Journal of International Law

——, 'On the Right to External Self-Determination: "Selfistans," Succession, and the Great Powers' Rule' [2010] Minnesota Jounal of International Law 137

Suny R, ‘Nationality and Class in the Revolution of 1917: A Re-Examination of Categories’, *Stalinism: Its Nature and Aftermath* (N Lampert and G Rittersporn 1932)

Suny RG, *‘They Can Live in the Desert but Nowhere Else’: A History of the Armenian Genocide* (Princeton University Press 2015)

Swan Q, ‘Blinded by Bandung?’ (2018) 2018 Radical History Review 58

Talmon S, ‘The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?’ (2005) 75 British Yearbook of International Law 101

‘The Treaty of Sèvres, 1920 (The Treaty Of Peace Between The Allied And Associated Powers And Turkey Signed At Sèvres August 10, 1920)’

Tierney, ‘In a State of Flux: Self-Determination and the Collapse of Yugoslavia’ (1999) 6 International Journal on Minority and Group Rights 197

Traverso E, *The End of Jewish Modernity* (David Fernbach tr, Pluto Press 2016)

Varnava A, ‘The Politics and Imperialism of Colonial and Foreign Volunteer Legions during the Great War: Comparing Proposals for Cypriot, Armenian, and Jewish Legions’ (2015) 22 War in History 344

Wimmer A and Brian M, ‘From Empire to Nation-State: Explaining Wars in the Modern World, 1816-2001’ (2006) 71 American Sociological Review 867

Yamauchi K, Menkhaus H and Satō F (eds), *Japanischer Brückenbauer zum deutschen Rechtskreis: Festschrift für Koresuke Yamauchi zum 60. Geburtstag* (Duncker & Humblot 2006)