

**Responsible or Guilty?
Interpretive Polysemy in the German Reparations Debate***

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The role of the Treaty of Versailles in establishing (and by extension) disturbing the political order of Europe has been debated from the beginning. Versailles has been characterized as a failure and linked directly to the outbreak of World War II. Some argue that this is because of its inability to address the underlying causes of World War I and the inability to successfully contain a growing Germany.¹ Others argue that the Treaty of Versailles was too punitive, too one-sided in its assignment of responsibility and guilt, pointing to the seemingly “unprecedented” reparations as restraining conditions that strangled post-War economic development and cooperation.

Historians have recently reignited the debate over if and how the Treaty of Versailles attributed War Guilt to Germany. Sally Marks (2013) argues powerfully that the sole blame put on Germany as the author and main responsible party for the war is merely a myth, exploited by post-war German political elites to consolidate political power and justify their opposition to the post-war settlement. This notion that the punitive nature of Versailles’ philosophy was only a product of their mistranslation or purposeful misconstruction needs to be examined with close scrutiny, particularly as it relates to the way that German intellectuals, legal scholars and politicians constructed the letter and spirit of the Versailles Treaty for the German public in a way that presented the Allies’ document as a series of “Diktats.”

In fact, only one paragraph in the voluminous Treaty explicitly refers to German “responsibility,” in article 231. This article was included in the financial section of the Treaty and established “the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.”² This article does explicitly attribute “guilt.” Still, the belief in German war guilt was so strong at Versailles that it is not surprising that the article took on a life of its own and became a signifier for German “war guilt.”³ Indeed, historians have argued that this paragraph was not meant as a public indictment of Germany but rather as an indicator of the financial liability of Germany.⁴ Indeed, the following article 232 proposed the creation of a Reparations Commission, to determine the actual extent to which Germany could “make complete reparation for all such loss and damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency”⁵ (art. 232).

¹ Craig and Gilbert (1963, 142); Binkley and Mahr (1926); Binkley (1929).

² Versailles Treaty Article 231 – so called War Guilt Clause. Craig and Gilbert (1963, 142) Craig reports that the causal attribution of the war to German aggression was not intended as a moral judgment but as a statement of financial liability.

³ Schmitt (2003 [1950], 266).

⁴ Burnett (1965).

⁵ And in general all damage as defined in Annex I of the Versailles Treaty.

The authors of the Versailles Treaty may have avoided using the concept of “guilt,” but the heavily charged political debate around the Treaty negotiations and the strong public opinion against Germany certainly helped the German public see in the attribution of legal responsibility the ascription of a moral, or as Martti Koskenniemi argues, a “metaphysical guilt.”⁶ We do not dispute this fact. Our argument goes a step further: we claim that the re-appropriation by the German intellectuals and politicians – and the translation of responsibility into guilt – was facilitated by the ambiguity and plurivocality of the notion of responsibility found in the Versailles Treaty.

This definitional ambiguity was a direct product of the decentralized negotiation process. Indeed, if the Treaty of Versailles presents the illusion of a single document – worked out and negotiated among a group of politicians, diplomats and lawyers –, the reality was much more complicated and the Treaty itself represents the piecemeal approach of the various committees, commissions and back room consultations that contributed to the final result. For instance, the German responsibility in causing the war was debated in the *Commission on the Responsibilities of the Authors of War and the Enforcement of Penalties* (hereafter, Commission on Responsibilities), which came to the conclusion that Germany was indeed responsible for the war and recommended the prosecution of the German Emperor for the violation of “international morality and the sanctity of treaties” (a demand that was included in article 227 of the Treaty). Reparations (including article 231, the only one mentioning Germany’s “responsibility”) however were debated in the *Commission on the Reparation of Damages*. Both commissions made recommendations of what should be included in the Treaty, yet ultimately the Council of Four (Allied Heads of State) decided the final wording.⁷

This article will unpack these debates over the question of responsibility in criminal and financial matters, whose superposition, we argue, lead to the confusion between notions of legal responsibility and moral guilt. We will first focus on the notion of responsibility found in the legal doctrines of the French scholars who participated in the Commission on Responsibilities. Here, we discuss the legal arguments made by the French lawyers who promoted the idea that the German Emperor should be held responsible for violations of the sanctity of treaties and international morality. The Commission on Responsibilities made it clear that Germany’s actions were both morally and legally reprehensible and required not just reparations but retribution in the form of punishment. Responsibility was thus directly linked to guilt. Second, we will show how responsibility was conceived of in the legal doctrine of French “solidarist” politicians and legal experts who negotiated the establishment and implementation of German reparations to be paid to the Allies. We demonstrate that to them, collective responsibility was defined in contradistinction to the notion of guilt. Their actuarial conception of responsibility associated reparations with a collective mechanism of insurance against the risk of war, and the manifestation of a collective responsibility toward the victims of a war. In both debates, we will focus on the French intellectuals who participated in these debates, because the French were thought by the Germans to be the most influential advocates of the “war guilt” clause, in contrast to more lenient Anglo-American diplomacy. This article argues that the reality was more complex, by highlighting the multiplicity of interpretations and philosophies in the French politico-legal field.

⁶ Koskenniemi (2001, 292).

⁷ Burnett (1965, 17 ff., 66 ff.) Note that the Commission on the Reparation of Damages is different from the Reparations Commission that set the final amount and oversaw the implementation of reparations.

Tying Responsibility with Guilt: The Commission on Responsibilities

To understand the debate over reparations, responsibility and war guilt in the interwar period, it is important to keep in mind two different ways responsibility can be interpreted. In the broadest sense the notion of responsibility as liability conveys that some factual tie can be found between the actions of one party and their consequences. The attribution of responsibility can then justify the payment of compensation for property loss or other forms of damage. This notion of responsibility as liability motivated the wording of article 231 of the Versailles Treaty.

In contrast, moral responsibility, or guilt, arises out of a transgression of existing rules of a criminal nature – that is a violation of rules that not only cause damages to an individual party but threaten the social fabric of (international) society as such. Guilt is therefore not only about the actions themselves, but also entails a judgment about intentions and character of the party who committed the actions. Moreover, the attribution of criminal guilt justifies the imposition of punishment, as illustrated by the articles 227 through 230 of the Versailles Treaty, which concern the responsibility of the German Kaiser for violations of international law.

During preparations for the peace conference in Britain, France, Belgium, and to a lesser extend in the United States, the domestic public opinion, outraged over German war crimes, called for retribution and ascribed moral responsibility to Germany for the atrocities of the war. Planning for war crimes tribunals and a prosecution of the German Kaiser occupied the British Government as the calls to “Hang the Kaiser” and punish war criminals played an especially prominent role in the British parliamentary elections of 1918. The British proposal to prosecute the German Emperor met with enthusiastic approval from the French Premier, Georges Clemenceau.⁸ For the European allies, the question was thus not if but how to organize the unprecedented legal prosecution of a former sovereign, a question that French and British legal experts started to investigate in the run-up to the Paris Peace Conference. Moreover, Clemenceau ensured that deliberations over the responsibility for the war were put on top of the official agenda for the opening meeting of the Paris Peace Conference and thus ensured the establishment of the Commission on Responsibilities.

After a hastily conducted investigation into the causes of the war the Commission on Responsibilities left no doubt about Germany’s political responsibility. Their report went further and recommended the prosecution of the German Emperor “for a supreme offence against international morality and the sanctity of treaties” to be tried in front of a “special tribunal,” a demand that was included in the section on Penalties (art. 227-230) of the Versailles Treaty. The section on Penalties also declared “the right ... to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war,” (art. 228) and asked for the surrender of those accused to the Allies. Individuals “guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers” were to be brought before special international military tribunals (art. 229). Just as the prosecution of a sovereign, this suggested formation of international tribunals to try war crimes was unprecedented.

The work of the Commission on Responsibilities was not only an attempt to satisfy the domestic publics in Britain and France but also a forum for prominent international lawyers representing the Allied nations to rethink the legal tools available to deal with transgressions of international law, specifically the laws of war. The French were represented by André Tardieu (1875-1945) and Ferdinand Larnaude (1853-1942). Tardieu, a career diplomat and politician

⁸ Foltz (1978, 38-40); George (1939, 55,6).

who would go on to become prime minister of France, served as Clemenceau's adviser in the peace negotiations. He was a deputy of the Territory of Belfort, a small department that had been carved out from the larger regions of Alsace and Lorraine,⁹ the two departments that Germany had taken away from France in 1871, and which were returned to France in 1919. As the French deputy for a territory that had symbolized for fifty years the heroic resistance of the French against the Germans, Tardieu was ardently nationalist. His nationalism motivated a political move to the right, first towards Raymond Poincaré's anti-German politics in the 1920s and then far away to the right as he aged – as he ended up writing in anti-Semitic journals during the government of Léon Blum in the 1930s.

Politically, Ferdinand Larnaude stood halfway between Tardieu and the more liberal "solidarists," from whom he distanced himself, nonetheless. Even though one of Larnaude's mentors since the early stages of his career was Léon Bourgeois (1851-1925), the influential statesman who popularized the solidarist doctrine (see the next section), Larnaude's strong anti-German feelings brought him closer to the right.¹⁰ In preparation for the peace conference Larnaude and his colleague Lapradelle had been commissioned by Clemenceau to study the possible legal foundations of holding the German Emperor responsible.¹¹ They had presented a thoroughly researched and elegantly argued memorandum that was distributed to the Allied delegations during the opening session of the peace conference and formed the basis of the discussion over the imposition of penalties on the Kaiser for violations of international law and morality. In 1916, Larnaude had also participated in the work of a committee on the legal notion of reparations, comprised of law professors from the University of Paris, who all distanced themselves from the solidarists' idea that the right of reparations should be tied with an alleged state's "responsibility" to compensate for war damages. For them, the payment of reparations to civilians whose property had been destroyed did not express some form of "solidarity" between nationals – a notion too soft to become the basis of a new right for citizens. Rather, reparations made manifest the continued "national union" against the enemy, as reparations would allow the French to win the economic peace after winning the war. Indeed, Larnaude and his colleagues claimed that the payment of reparations came from the state's "duty to repair"¹² France's productive machine after its destruction – or in Larnaude's organicist vocabulary, reparations were just the product of a "state's reflex"¹³ to heal the productive forces after the major injury inflicted by the war. For Larnaude, it was neither needed, nor advisable, nor historically right, to base the notion of reparations on the French Republic's alleged responsibility in occasioning war damages.

In the deliberations of the Commission on Responsibilities, Larnaude and Tardieu repeatedly argued that the reference to Germany's "responsibility" should in fact be discussed in the context of international prosecutions of the crimes committed by the German army. Despite the lack of precedence, they argued that the creation of an international criminal court was in line with the spirit of the new international law embodied in President Wilson's vision – and in fact, Léon Bourgeois' internationalist conceptions of a legal order constructed by courts.¹⁴ When the

⁹ Belfort remained French after 1870 because it was never occupied, thanks to the heroic resistance of Denfert-Rochereau, the "lion" of Belfort.

¹⁰ For a detailed discussion of Larnaude's biography and his role at the Paris peace negotiations see Laniol (2012)

¹¹ Larnaude and de Lapradelle (1918).

¹² Barthélemy (1917, 62).

¹³ Larnaude (1917, 188).

¹⁴ Larnaude and de Lapradelle (1918, 20).

Commission started its work there was no significant disagreement over the fact that Germany was the aggressor of Belgium and that Germany had violated the laws of war. The Commission Report focused in particular on the breach of Belgium's neutrality. For Larnaude, the crime of aggression against Belgium was intrinsically linked with future war crimes conducted in France (like the use of chemical agents): as he said, the first act was characteristic of Germany's willingness to "go fast, to make this brusque attack more efficient, by multiplying also the acts of terrorism" against Belgian populations.¹⁵ Thus, even though Larnaude recognized that the act of aggression was not punishable under existing positive international law, he believed that the war crimes committed by Germany during the conduct of the war, and the association between the two, provided enough grounds for a criminal prosecution. Eventually, under his influence, the Commission on Responsibilities declared that "penal sanctions should be provided for such grave outrages against the elementary principles of international law."¹⁶

To solve the dilemma raised by the political necessity to hold Germany accountable and the lack of legal precedents, the Commission on Responsibilities shifted seamlessly from attributing responsibility for the beginning of the war to Germany as a whole, to proposing to hold German individuals "regardless of rank" accountable for their conduct in the war. This was not surprising since prosecuting a collective entity for a crime posed significant problems in terms of proving among other things knowledge and intent. In particular, Larnaude and Tardieu pushed aggressively for the prosecution of Kaiser Wilhelm against the opposition of the Americans, James Brown Scott and Robert Lansing.¹⁷ The Americans argued that responsibility for the prosecution of war crimes was best left to the military authority of individual states.¹⁸ Still, the majority report of the Commission suggested the establishment of an international tribunal to prosecute individuals regardless of rank (including heads of state) for violations of the laws of war during the conduct of operations.¹⁹ The Commission argued that a failure to punish violations of the laws and customs of war in defense of absolute sovereignty would "shock the conscience of civilized mankind," emphasizing that "the public conscience insists upon a sanction."²⁰ In the end, the vague wording of article 227 calling for prosecution of the German Emperor for "violation of international morality and the sanctity of treaties" did not reflect the vigorous and complicated debate during drafting over the adequate political and legal response to the ravages of World War I. But it attempted something unprecedented, namely the prosecution of a sovereign leader for breaches of legal agreements and command responsibility for violations of the laws of war in front of an international tribunal.²¹

A facet of this discussion which is important for our argument is the fact that the Commission on Responsibilities did not relate the calls to prosecute the German Emperor to the

¹⁵ Cited in Laniol (2012, 53).

¹⁶ Commission Report (1920) Chapter IV Conclusion.

¹⁷ For a detailed account for the different legal options that were considered by France, Great Britain and the United States see Foltz (1978). For the French position see Larnaude and de Lapradelle (1918).

¹⁸ Willis (1982, 72). Willis quotes Scott as saying "Feelings ran about as high as feelings can run. It ran especially high in the British membership and it ran extremely high in the French membership. It ran so high that relations were somewhat suspended."

¹⁹ Commission Report (1920, 116).

²⁰ Commission Report (1920, 116).

²¹ The Commission Meeting Records were not officially shared with the Germans but were leaked anyway. Worry about the war guilt clause started before the final text of the Versailles Treaty was known. Craig and Gilbert (1963, 141).

issue of reparations. Although attributing authorship for the war to a particular country could be used as a powerful justification to impose conditions and constraints on the aggressor, the debate over German criminal responsibility and guilt at Versailles centered on a different and complicated legal issue, namely how to think about and enforce the responsibility of states in the conduct of wars. In the Commission on Responsibilities, legal responsibility was defined in personal terms – holding heads of state and soldiers accountable for violations of international norms of conduct. This focus on individuals reinforced the analytical separation between the provisions on criminal prosecution and those articles on financial liability, which ultimately was assigned to the successor state of the German Reich, e.g. the Weimar Republic.

However, when the German delegation, which was not party to the negotiations and debates at Versailles, arrived at the peace conference, they immediately protested the section on penalties, articles 227-230, as well as the article 231 on German responsibility. The opposition to these two sections reflected the Germans' worry that the issues of reparations and responsibility for the war would be linked in order to exploit an attribution of war guilt to claim large reparations.²² Their opposition was consistent with the explicit instructions they had been given to fight a war guilt clause in the Treaty.²³ The delegation made clear on several occasions that they were prepared to accept to pay some reparations, and they were also prepared to accept responsibility for aggression towards Belgium's violation of neutrality, but they protested that their duty to pay reparations would be linked to the an attribution of responsibility for the origin of the war.²⁴

Paradoxically, it was the German protest against the articles on penalties (227-230) and their criticism of article 231 that made explicit the linkage between financial liability and moral responsibility that the Allies had until then left implicit (or had criticized). Faced with these protests, Clemenceau's answer on behalf of the Allies was swift and clear: The obligation for reparations logically arose out of the authorship of the war. The Allies told the Germans that "Germany's responsibility is not confined to having planned and started the war. She is no less responsible for the savage and inhuman manner in which it was conducted."²⁵ Thus, Clemenceau made the connection (which had not been made by the Commission on Responsibilities) between attribution of responsibility for the beginning of the war as well as for war crimes, and a duty to pay reparations to the civilian victims of the war. Clemenceau's reaction to the German criticism of the Treaty showed that the Germans had been right to suspect a connection between the financial and moral obligations placed on Germany by the Versailles Treaty, although the most prominent members of the Commission of Responsibilities, such as Larnaude, had consciously not made this connection. By rejecting both articles the Germans thus linked two issues that had purposefully been kept separate before their intervention in the debate. The reaction of the German delegation to the Versailles Treaty motivated the Allies to defend the Versailles Treaty as a whole.

²² In the past, such as for example in the treaties that ended the Franco-Prussian war in 1871 – the financial burden of the war costs (military costs) was put on the losing party without attributing moral or political responsibility for the war itself. Tomuschat (2004, 391).

²³ Instructions Given to the Plenipotentiaries to Versailles. Luckau (1941, 208). See also Binkley and Mahr (1926); Binkley (1929, 29); Marks (2013); Craig and Gilbert (1963, 142).

²⁴ German Note of May 13th on Reparations and Responsibility; Allied Note of May 20th on Reparations and Responsibility. Luckau (1941, 241,254).

²⁵ Allied Note June 16th 1919 in Luckau (1941, 412).

Still, the German opposition worked: soon after the Versailles Treaty entered into force, the Germans won half some of their battles as the question of German criminal responsibility dropped into the background. The attempt at trying Kaiser Wilhelm was by all accounts both a legal as well as diplomatic nightmare. The international prosecution of war crimes did not fare much better. The Germans refused to extradite soldiers and commanding officers accused of war crimes and instead offered to try offenses in the Reichsgericht, Leipzig (then the location of the highest German Court).²⁶ The proceedings, and especially the judgments, were widely perceived as a farce, strongly criticized by the Allies, and considered by the Germans as yet another national humiliation.²⁷ But the debate over the link between Germany's responsibility and the payment of reparations was far from closed.

Collective Responsibility in the Reparations Debate

If a connection existed between articles 227-230 and article 231 in the mind of Clemenceau, the authors and interpreters of the financial provisions in the Versailles Treaty (articles 231-247, and all the annexes) were in fact inspired by a very different legal and political ideology than the punitive philosophy of Larnaude and Tardieu. First, these financial provisions did not impose a specific amount of reparations to be paid by Germany, instead calling for the creation of a new Reparations Commission, to determine the extent to which Germany could “make complete reparation for all such loss and damage done to the civilian population of the Allied and Associated Powers”²⁸ (art. 232). Although the Allies planned that Germany would “make a special issue of bearer bonds” (art. 232) to restore the properties of civilians, the provisions also specified that the final amount as well as the schedule of payments of these reparations depended on the recommendation of the Reparations Commission (art. 233),²⁹ which shall “give to the German Government a just opportunity to be heard.” The inclusion of a German delegation in the deliberation process of the final amount of reparations contrasted with the institution of an Allied tribunal to try the Kaiser.

Philosophically, the inclusion of reparations provisions in the Versailles Treaty was strongly shaped by French diplomacy, whose efforts were themselves the result of a long mobilization initiated by the “solidarist” intellectuals active in the French radical-socialist and socialist circles.³⁰ In France, solidarism gathered a nebula of jurists and legal scholars interested in the notions of solidarity, debt and contract. Some legal theorists of solidarity belonged to the generation of Emile Durkheim (1858-1917), like Léon Bourgeois, the founder of the “Radical Socialist” Party, who incidentally had helped Ferdinand Larnaude find his first chair as a law professor. Bourgeois had been a strong proponent of obligatory arbitration of interstate conflicts at the Hague conferences. In 1919 he became the first President of the League of Nations, and in 1920 he received the Nobel Peace Prize for his activism in the arbitration of interstate conflicts. Charles Gide (1852-1932), a lawyer by training, and a professor of political economy in the faculty of law at Montpellier and then Paris, also promoted the “economic program of solidarists” and was a leader of the cooperativist movement, which sought to enhance international solidarity

²⁶ For a detailed discussion of the Leipzig Tribunals see Hankel (2003); Willis (1982); Bailey (1971).

²⁷ For a discussion of the clash of public opinion over the Leipzig tribunals among Allies and Germans see Bailey (1971, 265ff).

²⁸ And in general all damage as defined in Annex I of the Versailles Treaty.

²⁹ Versailles Treaty Article 231. The Reparations Commission could change the deadline of payment (art. 234).

³⁰ For a full exploration of these intellectual origins in the French legal academic context, and the specific role of Marcel Mauss, see Mallard (2011).

among consumers. In this effort, he was joined by a second generation of Durkheimian legal thinkers and politicians like Durkheim's nephew, Marcel Mauss (1872-1950), a fellow cooperativist activist, and his friend and exact contemporary, the future socialist Premier, Léon Blum (1872-1950).³¹

The presence of "solidarists" in the French government explains why the idea of collective insurance against the risk of war was first turned into law at the national level in France. In October 1915, the French Parliament enacted a law that proclaimed "the equality of all Frenchmen and the solidarity of nations in supporting the costs of war," and "the right to a complete reparation" for the "damages caused in France to the movable properties and real estate property, by acts of warfare."³² Indeed, not all European citizens had been equal before the risk of war, and indeed, most of the citizens of Germany, the South of France and Italy, did not suffer from the war as much as the French citizens in the North, who had lived where the trenches had been built. Thus, solidarists claimed, intra-state and inter-state cooperation mechanisms should be erected to distribute more evenly the losses of private citizens due to the risk of war, according to a logic of collective insurance (rather than because of a specifically German demonstration of immorality during the conduct of war).

After the Versailles Treaty was signed, all the solidarists, including Gide and Bourgeois (the latter was the rapporteur on the Versailles Treaty to the French Parliament), saw in the principle of reparations that the Treaty established a formidable advance for civilization, which created the legal basis for the recognition of an international "social debt" between the peoples of Europe. Indeed, in the words of Léon Bourgeois, the Allies did not ask "any indemnity from Germany in compensation for the military expenses and the exceptional civilian expenses which the state of war required them to pay."³³ Bourgeois evaluated that such indemnities for the war effort would have amounted for France to ask 143 billion francs on top of the 160 billion francs which France asked Germany to pay to compensate the French population – mostly for damages directly caused by bombardments (85 billions) and pensions to war invalids and widows (60 billion).³⁴ Special financial measures included in the Versailles Treaty only ensured that the German and Allied populations would suffer equally from the financial burden created by the war debts.³⁵ They did not require the Germans to pay for the Allied military costs of the war – a distinction that was very important for the German delegation, as the Germans agreed to pay for civilian destructions, but not for France's war effort.

This conception of reparations had roots in the French solidarist idea of reparative justice or "*justice réparative*," as Bourgeois called this new understanding of contracts and treaties whose only function was to repair things – or to "put things back where they were"³⁶ – without violence or the use of force or the ascription of metaphysical guilt. This idea of reparative justice was first tied to the notion of "social debt" in a domestic context, and then extended to the notion

³¹ It is important to note that many of these intellectuals were part of different religious minorities in France, (mostly Jews like Blum and Mauss and Protestants like Gide) who had felt threatened during the Dreyfus affair. Birnbaum (1988, 74); Pénin (1997, 231).

³² Gide (1932, 22).

³³ Bourgeois (1919, 82) The exception is Belgium, which required that Germany pay her inter-allied war debts, which helped Belgium pay for ammunitions.

³⁴ Even though President Wilson initially opposed the inclusion of pensions, they were eventually introduced in the bill after British lobbying. Trachtenberg (1979, 45).

³⁵ Germany's taxation should be indexed on the highest taxed population in Europe. Bourgeois (1919, 92).

³⁶ Cited in Blais (2007, 210).

of “reparations” in the international context. Indeed, solidarists assumed that every individual of a nation (and, after the Versailles Treaty, a European compact of nations) was born with a “social debt” which they needed to pay back in order to maintain the existence of social bonds (or solidarity) within (and between) nations. The contracts of treaties that organized financial solidarity and/or debts within and between nations could not be “diktats” that violated the sense of justice of one of the participants of the settlement.³⁷ In fact, for them, the reparations provisions benefitted all European nations: As Léon Blum told his fellow German socialists in 1923, “the notion of reparation is a new right, a rule of collective solidarity, a principle of national insurance, in which the socialists can only place their hopes.”³⁸

For French solidarists and socialists who acclaimed the financial provisions of the Versailles Treaty as a model of postwar settlement (like Gide, Blum and Mauss), the new debts instituted by the sixteen reparations articles of the Treaty expressed the same philosophy of financial responsibility that the Allies asked the new states established in the periphery of the German empire to follow. For instance, the newly created states that now controlled formerly German land had to repay the debts that Germany had contracted when it administered these territories (art. 255).³⁹ In the Versailles Treaty, past German financial obligations were thus transmitted to the new states; they were not added to the debt of the new Weimar Republic.⁴⁰ This transfer of debts to the successor states therefore was both a recognition of a new status (with statehood came the responsibility to honor one’s debt), and an injunction to act “responsibly”: the successor states were urged to stand the test of history by honoring the debts that had fallen on their shoulders, and the European solidarity they represented. The willingness that solidarists asked states to show in repaying their debt was a general principle, not a particular demand placed upon Germany – each state was asked to act responsibly in order to maintain the collective order.

The negotiations about the extent to which Germany should be asked to contribute to the reconstruction effort in non-German nations took place in the context of the inter-state Reparations Commission composed of experts (per art. 232), which gathered in Brussels in December 1920. Charles Gide represented France at the negotiations. The international experts determined that Germany would need to pay annual payments of three billion gold marks each year for 42 years. As Gide noted, the experts determined at the Brussels Conference “that France owes 219 billion pre-war francs in loans,” mostly borrowed on French capital, and to a small extent (about a sixth, or 38 billion), on foreign (British and American) creditors. The Commission sought to avoid a unilateral decision by each nation on the extent to which it would pay back its debts by instituting a macro-economic system of debt cancellation. Against the notion that Germany should pay all war damages in France and Belgium (according to the notion that Germany was fully responsible for these damages), Charles Gide and the other experts in the Commission inferred the reparations from the overall credit and debit of each nation and sought a truly international solution to the problem.⁴¹ Reparations were meant to fairly balance the price

³⁷ Bouglé (1924, 84).

³⁸ Blum (1972 [1923], 273).

³⁹ Germany lost about 13 per cent of its territory.

⁴⁰ Sack (1927, 177).

⁴¹ Gide was also commissioned by the Carnegie Endowment of International Peace to participate in the collaborative study of the costs of the Great War, Gide and Oualid (1931).

of the war among the warring parties so that European solidarity could be reconstituted on sustainable grounds.⁴²

The Superposition of Two Notions of Responsibility

Until 1920, different interpretations of the relationship between responsibility, guilt and reparations contained in the Versailles Treaty existed side by side. Some, like Clemenceau and Tardieu, had made it clear that the financial responsibility of Germany toward other nations was inferred from its guilt. Others, around the solidarists and socialists, believed that the notions of responsibility as liability and guilt should be separated (as the Germans expressed to the Allies before, during and after the Versailles Treaty negotiations). After Clemenceau's coalition of center-left and center-right parties lost the elections, however, the solidarists lost their influence in the new right-wing coalition that governed the country with Raymond Poincaré at its head.

Since the end of the war, the French right-wing commentators had questioned the legitimacy of the solidarist experts' participation in the Reparations Commission. Mauss observed that "the rightwing press fueled the stupid crowds who believed in their claims that 'Germany will pay'" whatever formidable sum the French would ask,⁴³ and that German reparations were a sanction that only Germany, as the guilty party, had to pay. Like German rightwing intellectuals – such as for example Carl Schmitt – they disputed the legitimacy of independent commissions working outside traditional inter-state organizations.⁴⁴ Yet their reason for challenging the legitimacy of the Reparations Commission differed radically from Schmitt's and was based on a strong assumption of German guilt. The rightwing coalition of Raymond Poincaré insisted that Germany was to pay the full extent of the sum decided in Brussels in 1920, and that France would not accept a renegotiation of the debt.

Of course, this superposition of guilt onto financial responsibility for war damages heightened the unwillingness of the German government to pay their reparations annuity. In early 1922, when Germany realized that it did not have enough foreign currency to pay reparations with French and Belgium francs and British pounds, a confrontation between France and Germany was avoided only by a slight margin. As Germany had to sell marks (rather than exported goods) to buy foreign moneys, the speculation against the mark led to further depreciation.⁴⁵ This led the French government to lobby for the stabilization of the mark.⁴⁶ Poincaré agreed at the last minute to re-assess the amount of reparations, if its own creditors, the British and the American banks (especially J.P. Morgan, which floated loans to the British and the French for almost half a billion dollars in 1915 and 1916) first cancelled part of the French debts.⁴⁷ J.P. Morgan refused this request. Instead, he agreed to float a loan to Germany so that it

⁴² The French team with Gide included other "solidarists" like Arthur Fontaine (1860-1931), a labor inspector and philanthropist, who was responsible for the International Labour Organization (ILO); and Charles Rist (1874-1955), a professor of law and economics who coauthored with Gide the *Histoire des Doctrines Economiques*, whose book on *La Déflation* was lauded by solidarists.

⁴³ Mauss (1997 [1922]-a).

⁴⁴ Schmitt (2003 [1950], 268).

⁴⁵ Maier (1988, 244).

⁴⁶ Mauss (1997 [1922]-c).

⁴⁷ Already in 1918, Gide had written that at some point, inter-allied debts would need to be cancelled; or that, if their total was re-negotiated, a lesser amount could be reimbursed by "un grand emprunt international solidaire" (cited in Pénin (1997, 185). In the Brussels Conference of 1920, Keynes had also proposed that the Americans should cancel the inter-allied debts, see Keynes (1920).

could avoid a default for 1922, and proposed that, in exchange, France write off some of the amount of reparations.⁴⁸ Although this crisis was narrowly avoided, the issue came back when Germany threatened to default on their 1923 reparations.

Leading up to the German default, the French experts, with Charles Gide at their head, urged the Poincaré's government to accept a re-structuring of the German debt, which meant that France had to accept a stabilization plan for the franc. Indeed, the stabilization of the franc required "a legal change in the value of the money, a procedure which we call 'stabilization,' a euphemism" for the re-evaluation of the debt, which was forced by the realization that much of the reparations money owed to France would never be reimbursed by the Germans.⁴⁹ Even if Poincaré refused this re-evaluation, the solidarists insisted that every country (France included, and not just Germany) should scale back the value of its money to a half or a third of its pre-war value, so that it could start paying back its debt with real money, rather than just using the printing press to avoid facing economic realities, as the German and French governments did.⁵⁰ The French government of Raymond Poincaré did not heed the advice and refused to lower the amount of reparations that France expected from Germany. As a result, when the Reparations Commission found Germany in default of its coal payments in January 1923, France unilaterally claimed authority to decide the sanctions, and Poincaré immediately sent French troops to occupy the Ruhr in retaliation for the default.

Quite predictably, the French occupation of the richest Western German regions confirmed the German interpretation of reparations as indemnities, and responsibility as guilt. As Marcel Mauss noted, the militarization of the French response to German default meant that the reparations paid by Germany "went to the bailiff [the French occupying armies] rather than to the victim,"⁵¹ i.e. the Belgian and French families whose properties had been destroyed. Moreover, the Ruhr crisis had unanticipated side effects, as the occupation of the Ruhr exported the financial crisis in Germany to France. In Germany, the crisis had convinced the government to stabilize the mark by creating a devalued new money, the Rentenmark, on November 15, 1923. As a result, the franc suffered in January 1924: as Mauss wrote, "the French army in the Ruhr, which is on a French payroll... finds its subsistence on location, spends money on location, and exports so many francs that ... the Germans and the little German girls are full of francs, which they now sell," since the "Germans started to prefer their *renten mark* to the franc, and even to gold."⁵²

Thus, the failure of the Ruhr adventure finally gave the Reparations Commission the authority they had lacked when they had tried to impose their stabilization plans on France (and Germany) prior to the Ruhr occupation. After the U.S. and British bankers started buying some francs to help France redress its parity with the gold standard, putting an end to the depreciation of the franc, Raymond Poincaré moved toward acceptance of the stabilization plan drawn up by a committee of experts (known as the "Dawes Plan," written under the Chairmanship of the U.S. vice-president Charles Dawes), to review Germany's capacity to pay reparations and France's

⁴⁸ Maier (1988, 287).

⁴⁹ Gide and Oualid (1931, 3).

⁵⁰ Mauss (1997 [1922]-b, 484).

⁵¹ Mauss (1997 [1924]-a, 580)

⁵² Mauss (1997 [1924]-a, 580).

capacity to pay inter-allied debts.⁵³ In April 1924 Léon Blum observed in *Le populaire* that at last “the experts, disavowing the policy of Poincaré, declared themselves in favor of a moratorium” on German payments until the Germans could accumulate enough money for their payments.⁵⁴ Ultimately the solidarists’ efforts were rewarded when the “Cartel des gauches” won the election in May 1924, with Blum’s SFIO as the first party in the new parliamentary majority.

Conclusion

From 1924, and the adoption of the Dawes plan, to 1933 and the German default, a similar pattern reproduced itself in sovereign debt negotiations. Germany continued to rely on private loans floated by U.S. banks to fund a large part of its reparations obligations,⁵⁵ while France continued to link the payment of their war debts to the U.S. to the German payment of its reparations obligations. Negotiations of debt restructuring used the similar conduit of the network of governmental representatives, experts and bankers who gathered for the Conferences on Reparations. Only after National Socialist Party took power in 1933, did Germany default on both reparations and foreign debts.⁵⁶ The German default showed that Germany not only rejected the notion that Germans had been responsible for the outbreak of the war and were guilty of war crimes, but also the solidarists’ notion of collective responsibility, namely that Germans should feel responsible for the fate of non-German populations in the postwar era. Both notions of responsibility, which had shaped the reparations debate for over a decade, were rejected by Germany’s political leaders. In their place, Hitler claimed that the new Reich had a higher responsibility (beyond that recognized by treaties) to defend and protect the interests of all Germans, wherever they might be situated (especially in new states with large populations of German-speaking minorities), thus ignoring the sanctity of the territorial boundaries drawn by the postwar treaties.

During the interwar period the heavily politicized debate about German responsibility continued to oscillate between an association with moral and political guilt and legal liability for a social debt, but it ultimately failed to lead to a shared understanding of “responsibility” between the debtor and creditor countries of Europe. As we showed, the ambiguous and multiple meanings that the notion of “responsibility” received in the Versailles Treaty cannot be appreciated by reading the text of the Treaty itself (where it appears in article 231 only). Instead, the ambiguous interpretation of that notion comes from the complicated history of decentralized negotiations between various committees of experts, statesmen and diplomats, as they negotiated not only the articles on reparations, but also those on the criminal guilt of the Kaiser. Considering the influence that such ambiguity had on the reception of the Versailles Treaty among German lawyers, diplomats and politicians, it was not a coincidence that after World War II, the Allies moved quickly to establish the criminal responsibility of Germany’s political leadership in Nuremberg.

⁵³ Putting an end to the Ruhr crisis, the three main points of the Dawes plan of August 1924 were: the end of the French occupation, the immediate payment of 1 billion marks and the Allied supervision of the Reichsbank Maier (1988, 481).

⁵⁴ Mauss (1997 [1924]-b, 652) .

⁵⁵ Schunker (1988).

⁵⁶ This leads Stephen Schunker to claim that the Weimar Republic paid almost no reparations at all, since it had largely paid the interest on its reparations debts with U.S. loans, Schunker (1988).

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