

# Modernism, Nationalism, and the Rhetoric of Reconstruction

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We do not lack systems, but energy—the energy to conform our morals to our ways of feeling.

Maurice Barrès, *The Enemy of the Laws* (1893)<sup>1</sup>

Hollow! It's all hollow! A chasm! It's cracking! Can you hear? There's something—down there—that's following us! Away! Away!

Alban Berg, *Wozzek* (1923)<sup>2</sup>

Under such circumstances, the principle of self-determination of peoples may be called into play. New aspirations of certain sections of a nation, which are sometimes based on old traditions or on a common language and civilisation, may come to the surface and produce effects which must be taken into account in the interests of the internal and external peace of nations.

Commission of Jurists, *Aaland Islands Case* (1920)<sup>3</sup>

[The Minority Protection] Treaties make . . . an exceedingly bold claim; for they maintain that it is possible to put an end to the whole movement towards so-called national self-determination . . . in favor of a true 'self-determination' based on feelings of political loyalty.

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1. MAURICE BARRÈS, *L'ENNEMI DES LOIS* 4 (1910; 1st ed. 1893). Maurice Barrès (1862-1923) was a French political writer and activist, whose non-conformist synthesis of nationalism and socialism served as an important precursor to the new ideological composites of the first half of the twentieth century. See ZEEV STERNHELL, *MAURICE BARRÈS ET LE NATIONALISME FRANÇAIS* (1972).

(All translations are mine unless otherwise noted.)

2. ALBAN BERG, *WOZZEK: OPERA IN THREE ACTS AFTER THE DRAMA "WOYZEK" BY GEORG BÜCHNER* Act I, Scene 2 (London Records, 1981; libretto: Sarah E. Soulsby trans., modified by author; 1st ed. 1923). Alban Berg was a composer of the "Second Viennese School" led by Arnold Schoenberg.

3. *Report of the International Commission of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion on the Aaland Islands Question*, League of Nations O.J., Spec. Supp. 3, at 6 (1920). This was the first adjudicatory decision relating to self-determination after the conclusion of the post-World War I peace settlement.

C.A. Macartney, *National States and National Minorities* (1934)<sup>4</sup>

We live at a time of renewed historical consciousness—in part due to the events in the former “East,” in part due to two decades of millennial pronouncements by many in the humanities and social sciences. Many declare that something called “Western modernity” has reached its culmination, and is either irrevocably disintegrating or is in urgent need of reconstruction. This way of talking, however, tends to conflate several centuries of intellectual history, failing to specify *which* “modernity” is at issue. In this essay,<sup>†</sup> I will suggest that we can gain useful insight on current legal and cultural debates by situating ourselves in relation to that period of early twentieth-century intellectual history known as “Modernism,” that phase of the history of “modernity” which has most shaped our own intellectual condition.

Specifically, I will discuss the relationship between certain broad characteristics of Modernist cultural renewal and the changes wrought in international law by various legal writers between the World Wars. This juxtaposition of forms of law with other forms of culture should not be viewed as a claim of a direct correlation or “influence,” but, rather, as indicating an overlapping series of responses to a common cultural situation. The juxtaposition suggests that transformations in legal thought can be productively viewed as participating in, and, indeed, partly creating, deep shifts in Western cultural history. The most important of such shifts in the first decades of our century, I would argue, was the advent of the central Modernist problematic: the paradoxical relationship between “primitivism” and experimentalism, a problematic that gave rise to a range of responses both among and within various cultural domains.

My interest in cultural Modernism should be viewed as part of a challenge to the dominant approaches to legal history, particularly international legal history. In international law, historical work tends to be undertaken with either a jurisprudential or a pragmatic interest. From the first perspective, one examines historical writings for their contributions to a perennial theoretical and logical project; one evaluates earlier theorists’ excessive (or insufficient) reliance on naturalism, positivism, “pure theory,” and sociological jurisprudence. From the second perspective, one views legal history as a series of specific responses to local problems; in the search for better solutions, one tallies up successes and failures and searches for causes and effects. Those who engage in legal

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4. C.A. MACARTNEY, NATIONAL STATES AND NATIONAL MINORITIES 278 (1934). Macartney’s study, published under the auspices of the Royal Institute of International Affairs, is one of the most frequently cited period sources on the question of nationalities between the wars.

history for the purpose of furthering linear progress in either jurisprudence or pragmatic policy tend to gloss over legal history's fundamental breaks and controversies; they also tend to view legal history in isolation from other cultural developments, an isolation which often precludes insight into the deeper meaning of legal change.

My historical study has concentrated on a disparate group of international legal writers—theorists, practitioners, judges—who worked in the aftermath of World War I to recast international law through focusing on the problem of European nationalism. In the period preceding the War, four Empires, Germany, Russia, Austria-Hungary, and Ottoman Turkey, had been understood to provide the primary conditions of the region's political structure. Many had thought that the mid-nineteenth-century problem of nationalities had been settled by the European order of the "Age of Empire";<sup>5</sup> indeed, as late as 1918, even the Allied Powers viewed the postwar survival of the Austro-Hungarian Empire as a European "necessity."<sup>6</sup> This attitude is quite understandable: an extraordinary act of imagination is required to conceive of any domain of human life absent those structuring elements hitherto perceived as indispensable for coherent thought and action. Only a combination of military, political, and ideological events compelled the Allies to face the challenge posed by imperial disintegration.<sup>7</sup> One of the central tasks of the postwar world would henceforth be to figure out the appropriate relationship between national identity and state sovereignty in the complex ethnic and political conditions of Central Europe.

The legal writers on whom I focus sought to create a new and complex way of thinking about postwar Europe that would take into account the subtle issues raised by the passions of peoples. They saw the "old," prewar international law, with its narrow rigor and need for certainties, as a product of an ossified nineteenth-century culture, a culture surpassed by the new era's intellectual and political developments. Confronted with the nationalist challenge, the "old" law could only attempt in vain either to ignore or to repress what its outmoded concepts could not comprehend.

This legal watershed thus bore a strong affinity with transformations in other areas of high European culture between the 1890's and the 1930's. Like the new international lawyers, cultural Modernists—whether artists, literary writers, psychoanalysts, or nonconformist political theorists

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5. The Habsburg Empire, about to disintegrate under various national pressures, illustrates the limitations of nationalism. For though most of its people were, by the early 1900's, unquestionably conscious of belonging to some nationality or other, few of them thought that this was incompatible with support for the Habsburg monarchy.

ERIC HOBBSBAWM, *THE AGE OF EMPIRE: 1875-1914* 163 (1989). See also ALFRED COBBAN, *THE NATION STATE AND NATIONAL SELF-DETERMINATION* 46-49 (1969).

6. COBBAN, *supra* note 5, at 53-54.

7. *Id.* at 54-56.

of left and right—sought to reinvigorate their respective domains by transcending what they saw as the surface platitudes of nineteenth-century bourgeois culture. For the purpose of transforming the current practice of international legal history (and at the consequent risk of oversimplification), I have isolated several basic characteristics of a certain tendency in this movement which I would call “high Modernism.”<sup>8</sup> I would describe high Modernism as marked by the following four basic features: 1) the critique of representation; 2) an openness to so-called “primitive” sources of cultural energy; 3) innovative experimentation with the technical means specific to each cultural medium; and 4) the juxtaposition, in a single work, of elements considered irreconcilable under traditional criteria of coherence.

The basic presupposition for high Modernist cultural renewal was the critique of representation—in other words, the abandonment of conformity to given natural or conventional subject matter as the primary goal of cultural creation.<sup>9</sup> Modernists called for “emancipation from dependence on nature,”<sup>10</sup> seeking to displace the privileged role of the criteria by which many had measured Western cultural works since the Renaissance. Modernists demonstrated that these supposedly “natural” criteria were simply those of one possible signifying system, one possible vocabulary of expression. The Modernist cultural upheaval aimed at an unleashing of the signifying imagination, the licensing of a range of efforts to create new expressive vocabularies whose validity would no longer be measured by the privilege formerly accorded to imitation. This de-privileging of the object of representation radically brought into question the foundations of culture and politics as they had been understood by some previous versions of “modernity.”

Once freed from the constraints of representation, Modernists engaged in two general types of exploration. First, they sought to renew European culture through recourse to what they viewed as “primitive” sources of cultural energy, such as the art of children, peasants, and non-European peoples. The Modernists’ “primitives” included the whole catalogue of those whom the high-cultural European male had repressed and fantasized about for millennia. The Modernists now sought them

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8. Following the work of such writers as Peter Bürger and Andreas Huyssen, I would distinguish high Modernism from the “avant-garde.” See PETER BÜRGER, *THEORY OF THE AVANT GARDE* (Michael Shaw trans., 1984); ANDREAS HUYSSSEN, *AFTER THE GREAT DIVIDE: MODERNISM, MASS CULTURE, POSTMODERNISM* (1986).

9. A critique of the centrality of “imitation,” “subject matter,” the “anecdotal,” “representation,” etc., abounds in the writings of artists and aestheticians in the first three decades of our century. The painter Léger declared flatly: “I transcribe this question in all its simplicity: ‘What does this represent?’ . . . [I] will try hard, in a very brief essay, to demonstrate this question’s total inanity.” Fernand Léger, *Les Origines de la Peinture et sa valeur représentative* (1913), in *FONCTIONS DE LA PEINTURE* 11 (1965).

10. WASILY KANDINSKY, *CONCERNING THE SPIRITUAL IN ART* 71 (Francis Golffing et al. trans., 1947; 1st ed. 1912).

out—or, rather, sought out their own fantasies about them.<sup>11</sup> Secondly, however, the critique of representation led Modernists in a seemingly opposite direction: the radical development of the sophisticated techniques of European high culture. Released from the constraints of representation, cultural creators would be able to experiment with their media, creating works marked by an unprecedented diversity.<sup>12</sup> Modernist “experimentalism” thus meant specialization, the multiplication of expressive means accomplished through the internal development of the intrinsic resources of each particular medium; “specialization,” wrote one Modernist, is the “modern thing.”<sup>13</sup>

Intellectual historians have characterized these two dimensions of Modernism in various ways, depending on the aspects of early twentieth-century culture studied: the “archaic” and the “futuristic,”<sup>14</sup> the “expressive” and the “constructive,”<sup>15</sup> the “primitivist” and the “abstract,”<sup>16</sup> and so forth.<sup>17</sup> Although these two dimensions—whatever particular form they took and however characterized—seem quite opposed as cultural directions, they were very closely related in Modernist theory and practice. As one commentator notes, “[t]he alliance of primitivism and abstraction is one of the most copiously documented facts of the [Modernist] period.”<sup>18</sup>

11. See ROBERT GOLDWATER, *PRIMITIVISM IN MODERN ART* 250-71 (enlarged ed., 1986; 1st ed. 1938), for an analysis of the differences between the Modernists' use of “primitive” art and such art taken “in itself.”

12. For Kandinsky, for example, painters should not be limited by the demands of fidelity to social conventions or natural objects. Rather, they should freely explore the “purely pictorial” possibilities—line, color, and form painted on a flat canvas—intrinsic to their medium. For example,

Legitimate and illegitimate combinations of colors, the shock of contrasting colors, the silencing of one color by another, the sounding of one color through another, the checking of fluid color spots by contours of design, the overflowing of these contours, the mingling and the sharp separation of surfaces, all these open *great vistas of purely pictorial possibility*.

KANDINSKY, *supra* note 10, at 66 (emphasis added). Similarly, discussing new forms of dance, Kandinsky explains that they are able to explore dance's specificity, *viz.*, “the interior meaning of motion,” by ridding themselves of historically encrusted layers of meaning. *Id.* at 71.

13. Léger, *supra* note 9, at 19.

14. CARL SCHORSKE, *FIN-DE-SIÈCLE VIENNA: POLITICS AND CULTURE* 167 (1980). See also Stephen Eric Bonner and D. Emily Hicks, *Expressionist Painting and the Aesthetic Dimension, in PASSION AND REBELLION: THE EXPRESSIONIST HERITAGE* 237, 242 (Stephen Eric Bonner & Douglas Kellner eds., 1983). (“To juxtapose the premodern to the modern . . . itself became a hallmark of ‘modernism.’”)

15. THEODOR ADORNO, *AESTHETIC THEORY* 363 (C. Lenhardt trans., 1984).

16. See, e.g., J.C. Middleton, *The Rise of Primitivism and its Relevance to the Poetry of Expressionism and Dada, in THE DISCONTINUOUS TRADITION: STUDIES IN GERMAN LITERATURE IN HONOUR OF ERNEST LUDWIG STAHL* 182 (P.F. Ganz ed., 1971). Middleton views the concept of “primitivism” as usefully encompassing a wide range of revolts against nineteenth-century culture that sought cultural renewal in unconventional or repressed sources. Among these “primitive” sources were “prelogical or savage art,” “naive European art,” “alogism in poetry,” “infantilism,” “resuscitation of folk forms,” “exoticism,” and “atavism.” *Id.* at 184-85.

17. See FREDRIC JAMESON, *FABLES OF AGGRESSION* 14 (1979). (“The various modernisms all seek to overcome . . . reification . . . by the explorations of a new Utopian and libidinal experience of the various sealed realms or psychic compartments to which they are condemned, but which they also reinvent.”)

18. Middleton, *supra* note 16, at 194.

The "alliance" between these two new dimensions, these two "extremes,"<sup>19</sup> was explicitly stressed by various Modernists. Bartók, for example, wrote that

it is a noteworthy fact that artistic perfection can only be achieved by one of two extremes: on the one hand by peasant folk in the mass, completely devoid of the culture of the town-dweller, on the other by creative power of an individual genius. The creative impulse of anyone who has the misfortune to be born between these two extremes leads only to barren, pointless and misshapen works.<sup>20</sup>

Bartók viewed the contemporary versions of these "extremes," peasant music and advanced atonal experimentalism, as "apparently opposite tendenc[ies]."<sup>21</sup> Nonetheless, he envisioned their productive juxtaposition in the same work. In works contrasting the "extremes," "the *opposition of the two tendencies reveals more clearly the individual properties of each*, while the effect of the whole becomes all the more powerful."<sup>22</sup> The "alliance" Modernists sought between the two new dimensions of cultural experimentation would thus not be some synthesis or balance,

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19. Federico García Lorca, *Teatro para el pueblo* (1934), quoted in A. Sinclair, *Elitism and the Cult of the Popular in Spain*, in *VISIONS AND BLUEPRINTS: AVANT-GARDE CULTURE AND RADICAL POLITICS IN EARLY TWENTIETH-CENTURY EUROPE* 221, 230 (Edward Timms & Peter Collier eds., 1988):

There is one audience we have found not to be fond of us: the middle one, the bourgeoisie, frivolous and given to materialism. Our audience, those who really grasp what the art of the theater is all about, is found at the two extremes: the cultured classes, university educated, or formed by their own artistic or intellectual cultural life, or the people, of the poorest and roughest, uncontaminated, virgin, a fertile ground for all the tremors of grief and the turns and reversals of grace.

Similarly, the Russian Futurists Velimir Khlebnikov and Aleksei Kruchenykh saw both kinds of departure from traditional verse as important parts of their program of literary renewal. The new verse would take one of two forms:

1. As if it were written and read in the twinkling of an eye! (singing, splash, dance, throwing down of clumsy structures, forgetting, unlearning).
2. As if it were written with difficulty, more uncomfortable than blacked boots or a truck in a drawing room.

Quoted in MARJORIE PERLOFF, *THE FUTURIST MOMENT: AVANT-GARDE, AVANT GUERRE, AND THE LANGUAGE OF RUPTURE* 124 (1986). Perloff comments:

To make the reader see something as if for the first time, to defamiliarize . . . the object, "to transfer the visual perception of an object into the sphere of a new perception," the poet either "speeds up" or "slows down" the familiar poetic process, either produces a text that appears to be spontaneous and improvisatory ("singing, splash, dance"), thus allowing us to forget, to unlearn what we had taken a "poem" to be, or, by foregrounding artifice, difficult locution, and highly contrived sound patterning, the poet makes us feel "more uncomfortable than blacked boots or a truck in a drawing room."

The poetry of the past . . . must, in any case, be scrapped.

*Id.*

20. Bela Bartók, *The Relation of Folk Song to the Development of the Art Music of Our Time* (1921), reprinted in *ESSAYS* 320, 322 (Benjamin Suchoff ed., 1976).

21. *Id.* at 323.

22. *Id.* at 324 (emphasis added). On the general phenomenon in early twentieth-century music of the juxtaposition of disparate musical elements in a single work, see Chapter Four ("Simultaneity") in H.H. STUCKENSCHMIDT, *TWENTIETH-CENTURY MUSIC* (1969). Stuckenschmidt relates this technique to similar developments in poetry and painting. *Id.* at 71.

but, rather, a disjunctive juxtaposition. The "alliance" would facilitate each of the "extremes" precisely through their polar disparity.

The Modernist understanding of these two new dimensions marked a rupture with "modernity's" previous understanding of the relationship between high culture and its foundational elements. For many Modernists, the subversive "primitive" they now viewed as the founding dimension of culture had little in common with the notion of stable "first principles." They rejected what they saw as naive, romantic efforts to open high Western culture to influences from its various "others" without challenging Western culture's underlying conception. The Modernists viewed this effort as based on a sentimental view of those "others," a view which imagined one could depict them using traditional methods of representation. For Modernists, the "primitive" was precisely that which resisted traditional representation due to its primal, multiple, or explosive nature.<sup>23</sup>

Paradoxically, Modernists thought that it would be precisely through experimental exploration of the intrinsic resources of cultural media that the "primitive" could be evoked in its authenticity. Conversely, it was only the introduction of the "primitive" into Western culture that would free that culture to engage in sophisticated formal explorations. The experimental and the "primitive" would thus stand in a relationship of reciprocal evocation and facilitation, a reciprocity resting precisely on the radical discontinuity and mutual exclusion of the two dimensions. The "primitive" would not serve as a stable ground for the experimental, nor would the experimental merely provide the rational articulation of that which the "primitive" left mute. For the painter Kandinsky, for example, "[t]he freer the abstract form, the purer and more 'primitive' the [spiritual] vibration."<sup>24</sup>

The fourth characteristic of Modernism—the juxtaposition of elements irreconcilable under traditional criteria of coherence—should be seen in relation to the first three. Longing for contact with an explosive, "primitive" reality, Modernists boldly sought unprecedented means of evoking that which could not be traditionally represented. Moreover, freed from traditional representational constraints, Modernists could develop new syntactical combinations whose logic did not conform to the logic of perception.<sup>25</sup> Modernists, therefore, created complex compositions of heterogeneous elements, compositions whose unifying principles would only come into being with the work itself. Finally, sensitive to the intrinsic potential of each medium, an artist working with several media would not seek a direct translation of the "content" of each into the other, but

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23. See generally GOLDWATER, *supra* note 11.

24. KANDINSKY, *supra* note 10, at 50.

25. See, e.g., Léger, *supra* note 9; Maurice Raynal, *Conception and Vision* (1912), reprinted in EDWARD F. FRY, *CUBISM* 94 (1966).

would create composite works whose elements would harmonize with each other only indirectly.

The paradoxical relationship of radical discontinuity and reciprocal facilitation between the two dimensions of Modernism took various forms. In this essay, I will illustrate these forms with several aesthetic and legal examples. I will begin with two familiar examples of Modernist aesthetics, drawn from the works of the painters Pablo Picasso and Wasily Kandinsky. I will then proceed to show how much of interwar international legal writing can be seen as a form of Modernism; I will specify this proposition with the two principal international legal responses to the problem of European nationalism: plebiscitary self-determination and international minority protection. Finally, I will turn to some of the more audacious and troubling dimensions of Modernism, through the examples of the architect Le Corbusier's "Plans" and the comprehensive legal programs for internationalizing certain European regions with particularly vexing nationalist conflicts. Throughout, I will show how various versions of Modernism in the arts can be productively understood as forming an overlapping series with various versions of legal Modernism.

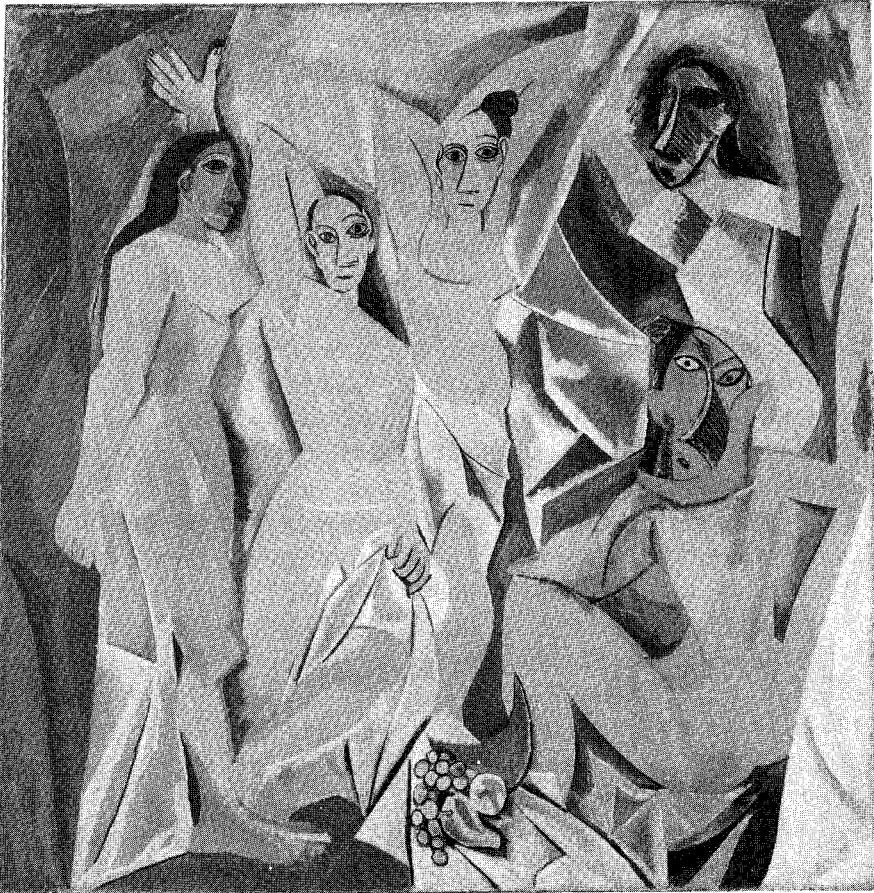
My first aesthetic example is Picasso's painting *Les Femmes d'Alger (O. J.)* (1911), one of the inaugural works of twentieth-century art. The painting depicts five female figures, all subjected in various ways to perceptual distortions breaking with the "classical norm for the human figure."<sup>26</sup> One art historian has described the painting in words that capture significant aspects of the Modernist sensibility: the "most immediate quality of *Les Femmes d'Alger* is a barbaric dissonant power," reflecting Picasso's "fascination with the primitive"; the painting shows the depths and range of this fascination "not only in explicit references to Iberian sculpture in the three nudes at the left and to African Negro [sic] sculpture in the two figures at the right but in the savagery that dominates the painting."<sup>27</sup> This description reflects the way in which such Modernist creations embodied certain characteristic Western fantasies about the "primitive."

Strangely enough, the historical importance of this openness to the "primitive" lay in the way it facilitated Picasso's formal, "purely pictorial" explorations that led to the development of Cubism. Having abandoned the traditional conventions for representing the human figure, *Les Femmes d'Alger* liberated the artist to engage in "painterly" innovations—particularly the abandonment of linear perspective and the use

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26. FRY, *supra* note 25, at 13.

27. ROBERT ROSENBLUM, *CUBISM AND TWENTIETH-CENTURY ART* 12 (1966). It is, of course, highly significant that this inaugural moment of Modernist art occurs through the deformation of the female body. See, e.g., JULIA KRISTEVA, *LA RÉVOLUTION DU LANGAGE POÉTIQUE* (1974); ALICE JARDINE, *GYNESIS: CONFIGURATIONS OF WOMAN AND MODERNITY* (1985).



Pablo Picasso, *Les Femmes d'Alger (O. J.)*. Paris 1907. Oil on canvas, 8' x 7'8". Collection, the Museum of Modern Art. New York. Acquired through the Lillie P. Bliss Bequest.

of a single source of light—impossible under a representational régime. It initiated that typically Cubist fragmentation of the depicted object into geometrical facets, a fragmentation in which volume is depicted through contrasting planes, rather than through an illusionistic representation of objects. The juxtaposed facets of the object were thus perceptually inconsistent, for such “faceting produced a complex structure of planes at different levels and going in different directions.”<sup>28</sup> The Cubists produced richer “purely pictorial” works precisely by abandoning the goal of representational accuracy and coherence.<sup>29</sup>

*Les Demoiselles* and its aftermath inaugurated the Modernist pursuit of painterly goals solely through the intrinsic resources of the flat surface of the canvas, rather than through an appeal to the world of perception. The painting thus marked a peculiarly Modernist conjuncture: between the European fantasy of the “primitive” as “savage,” even “monstrous,” and the creation of a new, eminently sophisticated form of high European art.<sup>30</sup> Specifically, the painting illustrates the way in which the disintegration of the traditional “object” of painting, a disintegration occurring under “primitivist” pressure, posed purely artistic challenges that led to the formal exploration of the high-cultural potential of the medium.

My second aesthetic example is the highly influential essay by Kandinsky, *Concerning the Spiritual in Art*, published in 1912. Kandinsky called for the liberation of art’s autonomous resources, declaring that “conventional beauty must go, and the literal element, ‘storytelling,’ or ‘anecdote’ must be abandoned.”<sup>31</sup> At the same time, he argued that it was precisely through this critique of representation that art would be able to touch the deepest recesses of the human soul. He rejected any traditional attempt to *represent* those recesses, an attempt he believed to be characteristic of the tepid mixture of “mood” and “nature” that produced impressionism.<sup>32</sup> Rather, he declared, “form alone, even though abstract and geometrical, has its internal resonance.”<sup>33</sup> Indeed, the artwork can evoke this “internal resonance” only through progressively abandoning representational reference as its guiding principle. To

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28. DOUGLAS COOPER, *THE CUBIST EPOCH* 45 (1971). For example, describing Georges Braque’s *Harbor in Normandy* (1909), Cooper notes that the painter “has seen to it that where a facet leads the eye backwards into the pictorial space this is countered by one which brings it forward again.” *Id.* at 40.

29. See Raynal, *supra* note 25, at 94.

30. There was also this large painting . . . which has since been called “Les Demoiselles d’Avignon” and which constitutes the point of departure for Cubism. . . . The painting . . . appeared to everyone as something insane or monstrous. . . . [The right half] is really the point of departure of a new art.

DAVID HENRY KAHNWEILER, *MES GALÉRIES ET MES PEINTRES: ENTRETIENS AVEC FRANCIS CRÉMIEUX* 55-56 (1961).

31. KANDINSKY, *supra* note 10, at 71.

32. *Id.* at 24-25.

33. *Id.* at 47.

requote Kandinsky's striking phrase: "[t]he freer the abstract form, the purer and more 'primitive' the [spiritual] vibration."<sup>34</sup>

Despite this critique of representation and the "purifying" separation of the "abstract" and the "primitive," Kandinsky asserted that "form harmony must rest only on the purposive vibration of the human soul." The artist, therefore, must be guided by the "principle of internal necessity"<sup>35</sup> in her choice of abstract forms. Paradoxically, therefore, art would both be freed from the external constraints of representation, and be strictly determined by its relationship to an unrepresentable "internal necessity."

Kandinsky stressed that his critique of representation did not mean that artists should banish all representational elements from their work.<sup>36</sup> To be sure, the function of representational elements would no longer be that of fidelity to external objects; rather, the artist would employ representational elements, just as she uses abstract elements, only as another means of touching the deepest spiritual resonances.<sup>37</sup> In this way, even the traditional elements of painting are reinterpreted and pressed into the service of the new system.<sup>38</sup> The Modernist work, therefore, can include a juxtaposition of abstract forms and representational elements, a complex work capable of evoking the deepest "primitive" "resonances."<sup>39</sup>

In these two examples, the "alliance" of the "primitivist" and experimentalist dimensions of Modernism functions in two quite different, nearly inverted, ways. Picasso's painting uses the "primitive" as a disruptive force to dismantle the traditional centrality of the unified object of perception; yet, paradoxically, the entry of this disruptive force serves to authorize the proto-Cubist formal innovations which Picasso and others would then develop without direct reference to the "primitive." Kandinsky's essay moves in the opposite direction. For Kandinsky, freedom from representational norms is an indispensable prerequisite for engaging in formal exploration; yet, this autonomous exploration must be strictly guided by the "principle of internal necessity." Moreover,

34. *Id.* at 50.

35. *Id.* at 47.

36. *Id.* at 50.

37. *Id.* at 49.

38. *Id.* at 50.

39. For Kandinsky, the importance of this juxtaposition of the heterogeneous was further highlighted by his insistence on the specificity and autonomy of each artistic medium. He contended that a particular medium should not violate its own specificity by seeking simply to translate that which is expressed in another, any more than it should seek to represent a natural or social object. For Kandinsky, "each art has its peculiar force, which cannot be replaced by that of any other." *Id.* at 40. Nonetheless, it was this very difference between the arts that allowed the possibility of their productive juxtaposition: "each art will bring to [a] general [internal] tone its own special characteristics, thereby adding to it a richness and power which no one art form could achieve." *Id.* at 64. Such a juxtaposition would maintain each art's specificity rather than produce a homogenizing mixture. Kandinsky's theory thus called for a proliferation of forms both within each medium and among media in a "monumental art," an art whose unity would emerge paradoxically from the ways in which different media create a broad range of internal spiritual resonances.

Kandinsky claimed that experimentation should only be viewed as successful when it is capable of evoking a “primitive” spiritual resonance. In *Les Femmes d’Alger*, the “primitivist” disruption serves as the jumping-off point for autonomous, high-cultural innovation; in *Concerning the Spiritual in Art*, the goal of autonomous, high-cultural innovation is a return to unrepresentable, “primitive” sources of spirituality. These two examples of Modernist aesthetics thus show inverted responses to a common cultural problematic: the relationship between the “primitive,” understood as subversive, and the experimental, understood as innovation freed from representation.

At this point, I would like to present an initial outline of the parallel I will draw between cultural Modernism and interwar understandings of the new international law. I would compare the four basic characteristics of Modernism listed above—the critique of representation, the openness to the “primitive,” the unprecedented exploration of the specific means of each medium, and the juxtaposition of the heterogeneous—with four key elements of the new international law: 1) the critique of the view of the sovereign state as the object which defines international law and to which it must seek to conform its doctrines and institutions; 2) an openness to the hitherto repressed or denied forces of nationalism; 3) the unprecedented invention of a wide variety of techniques, understood as specifically “legal”; and 4) the juxtaposition, in international legal discourse, doctrines, and institutions, of elements incompatible under traditional legal criteria. In the new international law, heterogeneous elements—reflecting such competing sources of authority as the state, the nation, the individual, and the international community—would coexist in international legal compositions unified only by the newly heightened legal medium, rather than by reference to extra-legal sources of legitimacy. Such complex and sophisticated works would be understood, paradoxically, as putting legal reason in touch with the deepest desires of popular nationalist energy. Sovereignty, like the representational elements in Modernist painting, would not be banished but would be pressed into the service of the new system. Finally, just as the relationship between the “primitive” and the experimental was understood and expressed in various ways by cultural Modernists, so the new international law would be marked by a wide diversity of forms, each presenting a version of international legal Modernism.

Like all Modernists, many interwar lawyers criticized the taken-for-granted objects hitherto thought to define their domain. This legal version of the critique of representation took the form of a rejection of so-called “international legal positivism”—i.e., the notion that established sovereign states were the sole source of international legal authority and that the relationships between sovereigns constituted that law’s sole subject matter. Just as Modernists in other cultural areas abandoned repre-

sentation of stable objects as the goal of art, so international lawyers rejected conformity to the needs of established sovereign states as the touchstone of international law.

Many interwar lawyers saw the incorporation of the passionate forces of nationalism, unleashed by the collapse of the central European empires, as essential to the renewal of their domain, as supplying contact with the vital ground of international life missing from nineteenth-century international law. They did not, however, understand this incorporation as the replacement of an unauthentic, superficial ground of international law—states—with a rationalist grounding of their discipline in the name of such “first principles” as the “nation” or the “people.” On the contrary, many interwar lawyers’ conception of nationalism was strikingly similar to other Modernists’ conception of the “primitive.”

Just as other Modernists rejected naive, sentimental views of “primitive” culture, so the legal Modernists rejected the liberal nationalist faith of President Woodrow Wilson and his nineteenth-century precursors. For liberal nationalists, the nationalist revolt against positivism, against the centrality of traditional, multinational states, was identical with the struggle for the creation of a rational, democratic, and peaceful world order. This unproblematic link between nationalism and liberal democracy could no longer be accepted by many interwar writers. On the contrary, they saw the nationalist revolt that began during World War I as an outgrowth of irrational, explosive passion. Unmediated deference to nationalist aspirations, therefore, could never lead to a peaceful world order. Rather, the vital, passionate, nationalist forces, though they served to clear the debris of ossified legal structures, had to be channeled and given form by newly developed legal concepts, doctrines, and institutions.

Before continuing, I would register one important caveat: just as romantic, pre-Modernist attitudes to the “primitive” persisted in art and other cultural domains in the early twentieth century (and, indeed, to our own day), so liberal nationalism persisted in the attitudes of many interwar legal writers. The international legal Modernism I discuss here must be seen as an ideal-type. Wilsonian, liberal nationalist commentaries on the Versailles system continued to influence debate even as other legal writings elaborated the new conception I would view as specifically Modernist. Indeed, at times one may discern liberal nationalist and Modernist conceptions in the writings of a single author.

In essays like *Le Principe des nationalités*, Professor Robert Redslob of Strasbourg<sup>40</sup> was one of those who articulated a Modernist view of the

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40. Redslob's original work was undertaken in pre-World War I, i.e. German, Alsace. Redslob was the author of many monographs on international law, first in German, then, after the war, in French. It is, of course, no accident that important French writing on the subject should emerge from Strasbourg.

new international law of nationalism. For Redslob, the clash between the revolutionary aspirations of nationalism and the self-preserving will of established states was nothing less than that between "creative freedom and legality."<sup>41</sup> Nonetheless, these "nearly irreconcilable adversaries"<sup>42</sup> could enter into a relationship of reciprocal facilitation. Thus, on the one hand, he called for the renewal of law through its deference to the primacy of nationalist passion:

It would suffice that this primordial right [*droit*], taken in itself, denuded of its dialectical and artificial exterior, come to model itself on the real movement of nationalities, on *the pathos of an elemental force* which arises in the history of peoples, in order for a true and definitive formulation to be born. Law would no longer sanction the most ingenious scheme of the state which has best positioned itself, but the *creative, emotional, passionate movement* of people who are carried forward by feeling towards a new constellation of their collective life.<sup>43</sup>

On the other hand, however, nationalism, the primal "élan of emancipation, the tumultuous flood of history,"<sup>44</sup> can only achieve its truth by giving way to its opposite, i.e., law. In this second moment, nationalism

would encounter [the thesis of nationalities] and make it its ally. Having made a pact with it, it would submit to its regulative influence. Henceforth, it would no longer abandon itself to impulse, no longer throw itself into adventures, but would look to the idea of law for prior justification [*sa justification préalable*].<sup>45</sup>

For Redslob, it is thus not a question of "balancing" legal reason and nationalist passion, but of a particular kind of "alliance" between the two. In a quintessentially Modernist gesture, he both views nationalism as that "elemental force" at the source of collective life *and* urges it to submit to law's "regulative influence"; conversely, he urges law both to "model" itself on this "tumultuous flood" *and* to displace it as its "*justification préalable*."

The new international law would thus take as its founding principle an inherently explosive element. Redslob insists on the resistance nationalism offers to traditional scientific inquiry: "One must not delude oneself with the hope that one can cast a fully clarifying light on this crater filled with flames and smoke."<sup>46</sup> Like other cultural Modernists, Redslob thus notes the intrinsic resistance to traditional representation of the "primitive" source of his domain's vitality. Accordingly, the goal is not positiv-

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41. ROBERT REDSLOB, LE PRINCIPE DES NATIONALITÉS 93 (1930).

42. *Id.* at 94.

43. *Id.* at 13 (emphasis added).

44. *Id.* at 34-35.

45. *Id.* at 35 (emphasis added).

46. *Id.* at 38.

ist science, but a Modernist "art,"<sup>47</sup> a new kind of legal reason.

For Redslob, nationalism provides the opportunity for a heightened competence of the international community to engage in sensitive and nuanced legal deliberations, as in "the great postwar settlements."<sup>48</sup> After reviewing the considerations that guided this "comprehensive reconstruction"<sup>49</sup> of Central Europe, Redslob voices confidence in international law:

One must not . . . capitulate before the problem and limit oneself to concluding that the solution will be dictated in each case by the particular competing interests. Despite the variety of situations and the fluidity of titles, it is possible to formulate some directives which would be like the rules of a Charter delimiting the contest of primordial claims.<sup>50</sup>

This new "Charter" of the international law of nationalism would not be limited by ultimate principles like sovereignty or nationality, let alone the traditional rules of positive law; nor would it simply play the humble role of interest balancing. Rather, it would establish a new domain for an autonomous international law, the domain of the "métajuridique."<sup>51</sup> This new domain, opened up for international law by the "primordial" nationalist forces, would consist of the free and flexible exploration of the legal medium, without the encumbrances of traditional conceptions. Paradoxically, the "métajuridique," a Modernist international law, would be grounded on a principle no more stable than "a crater filled with flames and smoke."

As imagined by my selected international legal writers, "nationalism" thus played a role strikingly similar to the role of the "primitive" in the Modernist imagination generally. The lawyers' construction of this "primitive" source of energy was marked by an ambivalence congruent with that marking other high Modernists' construction of other forms of the "primitive."<sup>52</sup> It was the interwar lawyers' break with both positivism and liberal nationalism that marked their radical break with their predecessors; this double break justifies our viewing their work as a form of Modernism, in the historically specific sense of the early twentieth-century movement for cultural and political renewal.

The Modernist impossibility of relying either on the historically inher-

47. *Id.* at 38. Although this formulation has a classical ring, Redslob's reasons for the lack of certitude in matters of justice are characteristically modernist, not Aristotelian. For Redslob the Modernist, justice is approximative because its object is a "flaming crater," not merely because it deals with matters that are contingent.

48. *Id.* at 131.

49. *Id.* at 129.

50. *Id.* at 119.

51. *Id.* at 122.

52. As should be apparent throughout this essay, I make no claims about whether "nationalism" or "primitivism" really were "primitive." The fit between the Modernist construction of them and certain recurrent themes in high Western culture makes one skeptical, to say the least.

ited cultural forms ("states"), or on any stable "foundation" of those forms (the "people" or "nation"), led to a radically heightened role for the legal Modernist. The Modernist lawyers interpreted the Versailles framework as the inauguration of an era of bold legal experimentation, an era of unprecedented legal autonomy. They saw the relationship between the two dimensions of legal renewal—an openness to "primitive" nationalism and an embrace of experimental creativity—in a variety of ways characterized by the Modernist composite of radical discontinuity and reciprocal facilitation.

I turn, therefore, to two forms of the "new international law" which illustrate competing versions of the legal Modernist composite of "primitivism" and experimentalism. The World War I peace treaties contained various doctrinal and institutional solutions to the problem posed to European stability by separatist nationalism. Each of these techniques signified a departure from an international law formerly concerned only with legally established states. In this section, I will discuss the Modernist lawyers' interpretation of the two most important solutions: first, internationally supervised plebiscites, as a method of granting political self-determination to national groups, and, second, international minority protection, in the form of international guarantees for the civil rights and cultural autonomy of those national groups not accorded the right to self-determination.

I have studied the plebiscite through the writings of Sarah Wambaugh, the most important interwar scholar on the law and practice of plebiscites. The central theme in Wambaugh's writings is the alliance between modern social scientific "technique" and the implementation of the passions of national groups. This composite constituted a double departure from an international law which formerly left to sovereign discretion how (and, indeed, *whether*) to take into account the wishes of the people. On the one hand, Wambaugh declared that the plebiscite was unavoidable in an age whose characteristic feature was the demand of peoples for control over their own destiny.<sup>53</sup> From this perspective, international law's departure from deference to sovereigns constituted an openness to nationalist desire. On the other hand, she argued that the implementation of these demands could lead to a stable international legal order only through a "scientifically" administered voting procedure. From this perspective, plebiscites constituted an enrichment of law's sophistication through innovative experimentation with its own unique resources. Above all, "science" demanded that the plebiscite territory be effectively "neutralized";<sup>54</sup> thus, the augmentation of international legal authority, though authorized by nationalist desire, mandated

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53. Sarah Wambaugh, *La Pratique des plébiscites internationaux*, 18 RCADI 153 (1927-III).

54. "A plebiscite in a country not effectively neutralized is a crime against political science and against the population." *Id.* at 252.

the development of precisely those autonomous legal resources most directly contrary to those of passionately partisan nationalism.<sup>55</sup>

Wambaugh asserted that this alliance between popular agitation and legal "technique" was grounded historically, as well as theoretically. During the decades preceding World War I, with the principle of nationalities and the right to self-determination in eclipse, only militants and intellectuals, those representatives of the extremes of passion and reason, were concerned with plebiscites:

Once more . . . the plebiscitary method found its defenders among the peoples whose nationalist aspirations had been stifled, and among students of political science who wanted to perfect the tools by which one would attain stability.<sup>56</sup>

The modern perfection of the "technique," then, would realize both goals: the "scientific attainment of stability" and the expression of the formerly "stifled nationalist aspirations."

Wambaugh's description of the 1935 plebiscite in the Saar territory, a region coveted by France and Germany, provides an example of her conception of this alliance. According to Wambaugh, the Saar plebiscite marked "the highest point yet attained by the technique of the international plebiscite."<sup>57</sup> The great significance of this perfecting of the "technique" was due to the fact that "[t]he duty of the League to administer a free and fair plebiscite ran counter to one of the most ardent national movements in all history"<sup>58</sup>—*viz.*, the German nationalist movement, which had fallen under the sway of the Nazis by the time of the plebiscite. The marshalling of the resources of modern "political science"<sup>59</sup> in the face of this "ardent" nationalism assured the world of the "validity" of the "title of the Reich to the Saar."<sup>60</sup> For Wambaugh, the "technique" of the plebiscite thus ran "counter" to "ardent nationalism"—and yet that nationalism served as the opportunity for the "technique's" perfection. Moreover, this alliance between "technique" and "ardency" served to enrich traditional legal forms such as "title." Title would no longer be based on mere historical accident or brute force, but, rather, would acquire "validity" through the perfection of the "technique." For Wambaugh's version of Modernism, international legal doctrines, such

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55. In one passage, Wambaugh's insistence on the importance of neutrals seemed to extend to the realm of scholarship. She concluded her 1939 preface to her study of the Saar plebiscite with the following:

For the benefit of readers in Germany it should perhaps be noted that the Christian name of the author [Sarah] does not denote Hebraic descent but one from a long line of Calvinists. SARAH WAMBAUGH, *THE SAAR PLEBISCITE* vii (1940). One would like to assume, of course, that this passage was written in a tone of sarcasm.

56. Wambaugh, *supra* note 53, at 178.

57. Wambaugh, *supra* note 55, at vi.

58. *Id.*

59. *Id.* at v.

60. *Id.* at vi.

as "title," would thus be enriched through technical experimentation made possible by nationalist disruption.

International minority protection was understood as the mirror image of plebiscitary self-determination. The League of Nations' minority protection system did not involve any alteration of sovereign frontiers. Rather, the new and expanded states of central Europe were required to provide civil rights and a certain cultural autonomy to the minority groups among their inhabitants. The minority protection system sought to maintain a separate social sphere in which the cultural life of a national minority could flourish—*without* either being integrated into the general culture of the state in which the minority resided<sup>61</sup> or being allowed direct representation in the international forum.<sup>62</sup> The system did not, for example, allow the national minorities formal legal standing in the World Court or the League Council. Rather, the League embedded its guarantees of minority rights in a complex arbitral, administrative, and judicial system, designed with the most up-to-date institutional techniques. Minority rights would thus be guaranteed by the organized international legal community pressing the sovereigns into the service of the new international legal order. The system constituted a departure from deference to traditional sovereign prerogatives, while abstaining from replacing the prerogatives of states with the prerogatives of "nations."

Modernist lawyers understood this system in terms of its double departure from a state-centered conception of international life. The World Court declared that the purpose of the minority protection guarantees was to preserve for the national minority the "very essence of its life as a minority" ("l'essence même de sa vie en tant que minorité").<sup>63</sup> At the same time, however, these guarantees were designed to ensure that this "essence" would not transcend its properly cultural domain and turn into a demand for political autonomy. The advanced institutional and doctrinal techniques served to block any direct representation of the minorities in the international forum, while enmeshing the sovereigns concerned in complex institutional discussions of matters formerly viewed as within their sovereign discretion. Paradoxically, the two aspirations of this system were viewed as inextricably related: the complexity of the innovative international machinery was required if particular national minority cultures were to express their "essence."

The contrast between these two solutions to the problem of nationalism may be usefully juxtaposed with the contrast in emphasis I have

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61. See, e.g., the debates over the "Mello-Franco Thesis," in which the "assimilationist" interpretation of Minorities Treaties was repudiated, in MACARTNEY, *supra* note 4, at 277.

62. See *The Report of the Committee Instituted by the Council Resolution of March 7, 1929*, LEAGUE OF NATIONS O.J., Spec. Supp. 73, at 43, 60-61 (1929).

63. *Minority Schools in Albania Case*, 1935 P.C.I.J. (ser. A/B) No. 64, at 17.

drawn between Picasso and Kandinsky. For Wambaugh, in response to the "ardent" pressures of nationalist desire, international law was authorized to suspend the power of state sovereignty to obstruct experimental legal innovation. Once freed from this obstacle, the plebiscitary "technique" was able to perfect its operations, chief among which was the "neutralization" of the plebiscite area. Thus, while subversive nationalist desire served as an authorizing stimulus to legal innovation, that innovation proceeded, indeed was only meaningful if it could proceed, without reference to that "primitive." Conversely, international minority protection installed a complex institutional machinery whose novel procedures attenuated sovereign prerogative in the name of the facilitation of particularistic cultural authenticity. Yet, that same machinery firmly excluded the minorities from direct representation in the international forum. This exclusion was viewed as the best way of ultimately facilitating their unrepresentable "essence." Like the two versions of Modernist aesthetics discussed earlier, these two Modernist legal forms thus give inverted accounts of the paradoxical "alliance" between "primitivism" and experimentalism. For one account, "primitive" nationalism serves to authorize the elaboration of its opposite, autonomous legal innovation; for the other account, autonomous legal innovation is designed to facilitate that which it excludes, the nationalist "essence."

These examples suggest some appealing as well as troubling qualities of the Modernist approach. Legal Modernism, in its various forms, continues to supply the model to which most of us look for renewal of our own ossified legal and political forms. We continue to believe in the expansion of the legal framework beyond the sovereign state to novel products of the legal imagination, an expansion we believe will allow formerly repressed national identities to flourish authentically. We continue to view excluded national movements as potential sources of violence and irrationality, while simultaneously supporting their struggles to achieve the paradoxical goal of "independence in Europe."<sup>64</sup> In these and other ways, we continue to nourish the double Modernist program for legal and political renewal.

Nevertheless, the experience of historical Modernism, in both its legal and cultural forms, should make the difficulties of this schema all too clear. Deprived of both traditional and rationalist ground, the Modernist lawyer was subject to certain characteristic difficulties. The two examples of international legal Modernism that I have discussed illustrate two of these problems: first, an uncritical faith in procedural technique on the part of the specialized legal adviser, and, second, a set of quandaries con-

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64. I thank Professor Bankowski for bringing this phrase to my attention.

cerning the possibility and desirability of the separation of the political and cultural spheres.

The example of the plebiscite in the Saar graphically illustrates the way in which faith in techniques of proceduralization can disarm any critical perspective on the political substance established through those techniques. Faith in the "technique" of the plebiscite, as exemplified by the liberal Wambaugh, was compatible with sanctioning, even celebrating, the result of an election which was procedurally valid . . . yet which granted the Nazis an important symbolic victory in the early stages of their attack on civilization. In the face of an imagined divide between cultural passion and legal reason, the "purification" of that reason through an emphasis on technical procedures can blind even well-meaning observers to the political consequences.

Conversely, the quandaries involved in all liberal attempts to establish "separate spheres" resurfaced in specifically Modernist form in the minority protection system's effort to segregate nationalist passion safely in a legally defined cultural sphere. These quandaries have both interpretive and institutional dimensions.

First, such attempts confront the legal reasoner with inherently indeterminate issues of interpretation. No satisfactory measure exists to determine the boundary between "political" autonomy, which was to be denied to national groups, and "cultural" autonomy, in which their aspirations were to be realized. The World Court faced this problem of interpretation repeatedly in its attempts to determine the scope of the Minority Protection Treaties in particular cases.<sup>65</sup>

I would argue that this problem of indeterminacy is neither a logical difficulty nor simply an ultimate consequence of critical Enlightenment rationality. Rather, it reflects a specific cultural situation: that of the Modernist whose role is both heightened and yet problematized by the critique of representation. The judge is expected to utilize her augmented authority to resolve the characteristic Modernist ambivalence: high culture's relationship to "primitive" forces viewed as both essential and dangerous. It should come as no surprise that a Court established to regulate such a deep cultural ambivalence would continually come up against the problem of indeterminacy. This problem has given rise in our own time to a series of responses both philosophical and pragmatic. Historical reflection on the formation of our attitudes towards nationalism, however, suggests that we may expect an endless proliferation of such responses unless we come to grips with this important cultural source of the problem of indeterminacy: once the founding principle came to be viewed as inherently resistant to direct representation, as inherently dis-

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65. The debate between the majority and dissent in the *Minority Schools in Albania Case*, *supra* note 63, is one of the best examples of this quandary.

continuous with high culture, the sophisticated legal decisionmaker was left without a ground of decision capable of satisfying traditional criteria of certainty.

Secondly, the minority protection system's institutional provisions seem politically fragile. The establishment of a separate social sphere for nationalist culture, to the extent it could be effective, threatens the creation of a minority culture marked by that split-off, self-contained quality that breeds resentment and destabilizing separatism. We need only think of the interwar political agitation of the *Auslandsdeutsche*, ethnic Germans living in countries neighboring Germany, to confirm this observation. The institutional separation of spheres thus threatens to undermine itself through the production of the very cauldron of "primal" energy it sought to constrain. The interpretive and institutional quandaries are closely related, though I would refrain from seeking a clear causal relationship between them; rather, they are both products of a paradoxical cultural situation.<sup>66</sup>

We are all well aware of the absolute catastrophe of the interwar period's conclusion. This catastrophe makes it incumbent upon us to reflect on the ideological weakness of interwar democratic ideology in combating fascism, and, in some cases, even in resisting its appeal. To confirm this fact, one would need to list only some of the illustrious interwar intellectuals who succumbed to what Sternhell has ironically called "*le charme secret du fascisme*."<sup>67</sup> I would suggest that, in many of

66. I would argue that the structure of Jürgen Habermas's response to the German Historians' Debate of the 1980's was quintessentially Modernist. As is well known, Habermas denounced certain German historians for attempting to create a narrative of German cultural development which would not require viewing the Nazi period as an irreparable rupture. In opposition to this attempt to integrate the past, Habermas proposed the following dualist schema: on the one hand, Germans should view their relationship to their state in terms of a "constitutional patriotism," loyalty to a set of procedures, a form of post-national collective identity related to the integration of Germany into Western Europe; and, on the other hand, they should engage in a national reflection on German cultural history that Habermas modelled on the existentialist assumption of responsibility for one's own past. Jürgen Habermas, *Historical Consciousness and Post-Traditional Identity: The Federal Republic's Orientation to the West*, in *THE NEW CONSERVATISM* (Shierry Weber Nicholsen ed. & trans., 1989). In contrast with a traditional identification with a nation-state whose legal order would be assumed to be an expression of an underlying national identity, Habermas's call was thus composed of a characteristically Modernist dualism: "constitutional patriotism" entails an experimental innovation with legal form in its focus on collective identification with a postnational order, while existential national reflection involves a heightening of ambivalent identification with a national tradition perceived as dangerously destabilizing.

One might have expected a quite different response from Habermas given his general social theory. Habermas's theory of communication is designed precisely to avoid viewing society as divided between reason and its other, between rationality and vitality. Rather, Habermas seeks to strengthen social contexts conducive to a communicative rationalization of the cultural constituents of collective identity. Instead of adapting this theory to Germany in the 1980's, Habermas opted for a Modernist liberalism. Germans were urged to depart simultaneously on two opposed trajectories: towards a denationalized polity, on the one hand, and a deepened national identity, on the other hand. I assume that Habermas will soon provide further elaboration of his notion of a "postnational identity." Nevertheless, the paradoxical dualistic program he seemed to offer in the 1980's illustrates the continued hold on our imagination of the Modernist method of cultural renewal, as well as our inability to think of the problem of nationalism outside its framework.

67. ZEEV STERNHELL, *LA NAISSANCE DE L'IDÉOLOGIE FASCISTE* 313 (1989).

these cases, this "*charme secret*" stemmed from a hope that fascism would be capable of providing social implementation of the double Modernist relationship between "primitive," authentic energy, and sophisticated forms of high culture.

The liberal triumphs of Modernist sensibility, like the music of Bartók, embody nuanced, ironic juxtapositions of the primal and the sophisticated—the former demystified, the latter energized. Reactionary Modernists,<sup>68</sup> on the other hand, lent themselves to the prospect of a demonic nationalist mobilization conducted through the most advanced cultural techniques. For their part, the fascists generally rejected Modernism and Modernists, refusing, with characteristic brutality, much of the help offered by reactionary Modernists. Nonetheless, the astonishing blindness of some of the "best minds" of that generation has bequeathed a maddening and unavoidable challenge to a variety of intellectual disciplines.

If, as I would claim, legal Modernism continues to shape all of our work, we lawyers, too, must continually reflect upon some of the sources of that blindness, even if it is still rather premature to reach any but the most tentative and partial suggestions on this score. I would argue that the Modernist break ushers in an ambivalent cultural situation of emancipatory possibilities and terrifying dangers. The most important danger is a particular kind of authoritarian temptation, terrifying in its "modern" specificity. I turn, therefore, to some of the most audacious forms of Modernist renewal, forms which illustrate some of Modernism's most exciting and most disturbing aspects.

The displacement of traditional cultural forms in the name of a heterogeneous "primitive" immediately raised for Modernists the question of the coordination of the resulting cultural fragments. For some, the experience of "primitivist" fragmentation led to delight in the free, anarchic play of discontinuous signs; for others, it led to an emphasis on a heightened coordinative role for the Modernist creator. Cubism has often been seen as the matrix of both possibilities.<sup>69</sup> Cubist works were marked by an emphasis on highly structured composition precisely in Cubism's most radical period, the period in which all certainties about perspective, the relationship of figure to ground, etc., were most put into question. Thus, two of the most prominent successor movements to Cubism were those of the anarchic Dadaists, on the one hand, and of the earnest Purists, on the other. The latter tendency reached its ultimate expression in the stress on "planning" in Modernist rhetoric, such as the apotheosis of

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68. I borrow the phrase from JEFFREY HERF, *REACTIONARY MODERNISM: TECHNOLOGY, CULTURE, AND POLITICS IN WEIMAR AND THE THIRD REICH* (1984).

69. See generally KENNETH E. SILVER, *ESPRIT DE CORPS: THE ART OF THE PARISIAN AVANT-GARDE AND THE FIRST WORLD WAR, 1914-1925* (1989), and CHRISTOPHER GREEN, *CUBISM AND ITS ENEMIES* (1987), for two related, though quite different, views of this matter.

the "Plan" by the architect Le Corbusier (Charles Edouard Jeanneret-Gris), and the transformation of "*socialisme*" into "*planisme*" by that very Modernist political theorist and activist, Henri De Man.<sup>70</sup> A brief elaboration of the role of the "Plan" will serve to round out my discussion of Modernism and its impact on the self-understanding of high-cultural experimenters in various domains.

Le Corbusier declared that construction was no longer determined either culturally or technologically by its traditional constituents: walls, roof, cornice.<sup>71</sup> This critique of conformity to traditional forms, however, immediately raised the question of the formal unity of Modernist construction.<sup>72</sup> If this unity was no longer dictated by tradition or physical necessity, neither could a coherently unified aesthetic form arise by itself out of the newly fragmented architectural elements. Accordingly, Le Corbusier turned to the notion of "regulating lines" [*tracés régulateurs*],<sup>73</sup> pure intellectual constructs culminating in an overall Plan.

The Plan is the generator.

Without a plan, you have lack of order, and wilfulness.

The Plan holds in itself the essence of sensation.

The great problems of tomorrow, dictated by collective necessities, put the question of "plan" in a new form.

Modern life demands, and is waiting for, a new kind of plan both for the house and for the city.<sup>74</sup>

An architectural composition would thus be a "pure creation of the mind";<sup>75</sup> the architect would achieve aesthetic freedom as the coordinator of the heterogeneous. Le Corbusier referred to architecture as that "strange calling which consists in making other people—masons, carpenters and joiners—. . . stick together elements . . . which have nothing in common."<sup>76</sup> In particular, it would be the role of engineers to discover the elementary forms required for construction; it would be the role of the architect to arrange those forms in an architectural composition. In the manner in which she arranges the elementary forms, the architect shows whether she is an "artist" or a "mere engineer."<sup>77</sup> Le Corbusier applied this model of the "Plan" to urban and social planning

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70. De Man was a leading figure in the Belgian socialist party between the wars. In both his theoretical writings and his political practice, De Man played a leading role in moving the party away from orthodox Marxism. On De Man and his influence in Belgium and France, see ZEEV STERNHELL, *NI DROITE, NI GAUCHE: L'IDÉOLOGIE FASCISTE EN FRANCE* 156-254 (2d ed. 1987).

71. "No wall, no roof, no cornice: the disturbing culmination of technical evolution. What aesthetic consequences, then!" LE CORBUSIER, *ARCHITECTURE D'ÉPOQUE MACHINISTE* 39 (1975; 1st ed. 1926).

72. *Id.* at 37.

73. *Id.*

74. LE CORBUSIER, *TOWARDS A NEW ARCHITECTURE* 45 (Frederick Etchells trans., 1986; 1st ed. 1927).

75. *Id.* at 73.

76. *Id.*

77. *Id.* at 201.

as well as to individual buildings.<sup>78</sup>

In their Twenties journal *L'Esprit Nouveau*, Le Corbusier and Ozenfant made quite explicit the connection between their solution to the Modernist subversion of pre-established unities and the turn to politically elitist doctrines of coordination.<sup>79</sup> A decade later, under the influence of Sorelian syndicalism,<sup>80</sup> Le Corbusier published *La Ville Radiieuse*, a work "Dedicated to AUTHORITY." The work's opening epigraph illuminated the relationship between this dedication and its Modernist concept of comprehensive planning:

Plans are not politics.

Plans are the rational and poetic monument set up in the midst of contingencies.

Contingencies are the environment: places, peoples, cultures,

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78. The combination of elements from heterogeneous ideas of social organization—utopian, communist, capitalist, pragmatic—can be seen in the details of Le Corbusier's various planning schemes. See, e.g., the subtle analysis of Le Corbusier's "Freehold Maisonette Scheme" in CHARLES JENCKS, *MODERN MOVEMENTS IN ARCHITECTURE* 35 (1973).

Le Corbusier's relationship to the "primitivism/experimentalism" schema is quite complex. On the one hand, in at least one passage, he articulated this schema in terms similar to those I have been highlighting throughout this essay. In a chapter entitled "Mechanical Spirit and U.S.A. Negroes," Le Corbusier proclaimed that African-American music was the "music of the soul joined to the rhythm of the mechanical." LE CORBUSIER, *QUAND LES CATHÉDRALES ÉTAIENT BLANCHES* 180 (1937). On the other hand, however, Le Corbusier's writings, from his Purist period forward, were aimed at replacing "primitivist" disruption with the search for rational, universal forms. For Le Corbusier and his Purist comrade Ozenfant, the merit of the Cubists lay in their rejection of naturalistic representation, their stress on the "predominance of the plastic over the descriptive." AMEDEE OZENFANT & LE CORBUSIER, *APRÈS LE CUBISME* 14 (1918). Cubist inquiry into the purely "plastic" quality of objects, however, suffered from arbitrariness. Instead of dissolving objects to discover their fundamental elements, Cubism dissolved them haphazardly, showing "only their accidental aspects" and creating "arbitrary and fantastic forms." Le Corbusier and Amedee Ozenfant, *Purism* (1920), in *MODERN ARTISTS ON ART* 58, 65 (Robert Herbert ed., 1964). Purist art, like Cubism, would free itself from merely given objects and recognize their constructed quality. However, Purism would avoid the Cubist error in failing to "seek out the invariable constituents of their chosen themes, which could have formed a universal, transmittable language." *Id.* The Purists believed that the "highest delectation of the human mind is the perception of order, and the greatest human satisfaction is the feeling of collaboration in this order." *Id.* at 73. For the Purists, therefore, "painting is a question of architecture." *Id.* at 70.

This post-Cubist context helps explain Le Corbusier's glorification of planning in his theoretical treatments of architecture itself. It also explains Le Corbusier's replacement of other Modernists' "primitives" with the "primitives" of the modern world, *viz.*, engineers. On Le Corbusier's description of engineers as new "primitives," see LE CORBUSIER, *TOWARDS A NEW ARCHITECTURE*, *supra* note 74, at 14. See also REYNER BANHAM, *THEORY AND DESIGN IN THE FIRST MACHINE AGE* 122-23, 229 (2d. ed. 1967).

79. See, e.g., Le Corbusier & Amedee Ozenfant, *Ce que nous avons fait, ce que nous ferons*, 11 *ESPRIT NOUVEAU* 1211, 1214 (1921).

OUR DESIRE, THEN, IS FOR THIS REVIEW TO PROVOKE THE INDISPENSABLE CONNECTION OF ELITES. Addressing itself to leaders [*aux conducteurs*], *Esprit Nouveau* hopes to give them an ever greater understanding of the 'cutting-edge ideas' [*idées forces*]. Prominent among the latter in the arts were "Cubism and Purism, expressions of '*idées forces*' that have provoked transformations in the arts equal to those scientific discoveries which have totally transformed [current] conditions . . ." *Id.* at 1214.

80. See Robert Fishman, *From the Radiant City to Vichy: Le Corbusier's Plans and Politics, 1928-1942*, in *THE OPEN HAND: ESSAYS ON LE CORBUSIER* (Russell Walden ed., 1977). On the relationship between Sorelian syndicalism and fascism, see STERNHELL, *supra* note 67, *passim*.

topographies, climates.<sup>81</sup>

Indeed, the desire for a “nonpolitical” Plan to coordinate the heterogeneous contingencies of modern life reflected Le Corbusier’s ongoing advocacy of an “Authority outside the ‘established disorder’ to assert the common good.”<sup>82</sup> Unfortunately, as in the case of Henri De Man, Le Corbusier’s Modernist apotheosis of the elite Plan brought him beyond authoritarian temptation to an active pursuit of collaboration with fascism. Following Robert Fishman, I would offer the following hypothesis: when Le Corbusier offered his services to the Vichy government, it was because he saw in the new régime the specific kind of authority required to implement his unprecedentedly heterogeneous Plans.<sup>83</sup> The step from complex Modernist composition to advocacy of authoritarian social planning and active collaboration was, of course, not inevitable—nor was it simply coincidental.<sup>84</sup>

In international law this impulse toward comprehensive reconstruction culminated in the design, implementation, and interpretation of the regimes for the three internationalized regions of the interwar period: the Saar, a region claimed by France and Germany, and Danzig and Upper Silesia, regions claimed by Poland and Germany. Such comprehensive legal constructions combined heterogeneous elements such as traditional forms of state sovereignty and novel (and divergent) techniques such as plebiscitary self-determination and international minority protection. These regimes embodied all four of the characteristics of legal Modernism: an attenuation of the centrality of states as the traditional structuring elements of international order, an openness to nationalist desire, an embrace of legal innovation, a juxtaposition of disparate legal elements.

81. LE CORBUSIER, *THE RADIANT CITY*, title page (Pamela Knight et al. trans., 1967; 1st ed. 1933).

82. Fishman, *supra* note 80, at 251.

83. *Id.*

84. The writings of Henri De Man during the German occupation are one striking illustration of the relationship between the double Modernist critique of prevailing political forms and the authoritarian temptation. In July 1940, De Man argued that the war had brought the collapse of an ossified system of capitalist nation-states:

The war has brought the debacle of the parliamentary regime and of capitalist plutocracy in the so-called democracies. For the working classes and for socialism, this collapse of a decrepit world, far from being a disaster, is a deliverance. . . . Peace was not able to emerge from the free accord of sovereign states and rival imperialism; it will be able to emerge from a Europe unified by the force of arms where economic frontiers will have been levelled.

Henri De Man, *Manifeste aux membres du parti ouvrier belge*, in *LE “DOSSIER LEOPOLD III”: ET AUTRES DOCUMENTS SUR LA PÉRIODE DE LA SECONDE GUERRE MONDIALE 183* (Michel Brélez ed., 1989).

Approximately one year later, he argued that Belgium, whose unity as a “state” was rendered problematic by the intrinsically multiple nature of the underlying “nation,” both depended for its survival on this new, “unified Europe,” and would facilitate its transcendence of old forms:

The very existence of Belgium depends entirely on the realization of certain conditions on a European scale. . . . [I] see a magnificent task reserved to Belgium in a Europe economically unified and ordered for the sake of durable peace, precisely because Belgium constitutes an exception to the rule of identity between State, people, and language.

*Henri De Man a parlé* (May 1941?), in *LE DOSSIER*, *supra*, at 212, 216.

Such heterogeneously composed regimes found their legal coherence in the heightened authority of the legal imagination—for only the augmented role and creativity of the Modernist lawyer could provide a unifying ground for the creation of novel legal forms out of elements irreconcilable under traditional criteria of coherence.

The League regime for Upper Silesia was the most complex of these regimes, constructed through the deployment of all of the new international legal techniques. Upper Silesia's "true" national character was disputed between Poland and Germany due to the intrinsically polyvalent nature of national identities and loyalties in the region.<sup>85</sup> The region was partitioned between the two states after an "expert" interpretation of the results of an internationally supervised plebiscite.<sup>86</sup> It was then placed under a fifteen-year international regime designed to ensure the temporary unity of the region. The regime included extensive provisions for minority protection. These and other provisions were institutionally guaranteed by international adjudicatory and administrative bodies. Upper Silesia, though partitioned between two sovereigns, thus had a legal system partially unified through international doctrines and institutions.

Georges Kaeckenbeeck, who played a key role in the workings of that "composite experiment,"<sup>87</sup> described the regime's creation as follows:

[The Geneva Convention for Upper Silesia] prescribed a regime of convalescence after the dangerous political operation of partition. The dangers recognized as looming ahead were partly economic and partly human. But the regime intended as a cure was throughout a legal one; it consisted of legal stipulations, extending to the most varied domains of life, imposed as legally binding in the two countries, and in part administered or sanctioned by international organs. It was, in fact, a great experiment. . . . The elimination of chaos and violence through legal order and legal process was its purpose.<sup>88</sup>

This passage encapsulates the fundamentals of the high Modernist perspective: the "chaos and violence" of the nationalist conflict in the region between 1919 and 1921 led to a radical international legal innovation, the piercing of sovereignty through the "dangerous political operation" of partitioning the region. This drastic departure from the traditional form then required the creation of a complex and sophisticated "legal" construction, the "great experiment" of the transitional regime: "an experi-

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85. See, e.g., *Rights of Minorities in Upper Silesia (Minority Schools) Case*, 1928 P.C.I.J. (ser. A) No. 12.

86. See *The Report of the Committee of Experts (1921)*, reprinted in GEORGES KAECKENBEECK, *THE INTERNATIONAL EXPERIMENT OF UPPER SILESIA* 554 (1942).

87. KAECKENBEECK, *supra* note 86, at 25. Kaeckenbeeck was president of the "Arbital Tribunal," one of the international organs that supervised the Upper Silesia regime.

88. *Id.* at 23.

ment—in the full force of the word—in treaty-making, in international organization, and in treaty-sanctioning.”<sup>89</sup> Nationalist disruption authorizes the departure from the state, the traditional defining object of international law, and gives rise to autonomous legal creativity.

Kaeckenbeek began his study by declaring that the Upper Silesia experiment entailed the transcendence of the traditional debates in international legal theory. Kaeckenbeek criticized both positivism and naturalism, i.e., those who would “invest any practice of States . . . with the glamour of law,” on the one hand, and those who try to “deduce it solely from a few accepted principles,” on the other.<sup>90</sup> Both methods seek to assure “coherence and plausibility”<sup>91</sup> for international law. Kaeckenbeek urged international law to take the risk of experimentation, the risk of departing from traditional canons of “coherence.”

Such a risk, he contended, was taken by the creators and implementors of the Upper Silesia regime. As an experiment, the Geneva Convention was particularly “rich in devices” for the interpretation and application of its provisions.<sup>92</sup> He praised the “detail” of the Convention and its “novelty”; “above all,” he celebrated the abundance of experience it provided in “testing a large variety of co-operative devices and international procedures.”<sup>93</sup>

Kaeckenbeek portrayed the drafting conference of the Geneva Convention that set up the Silesia regime as a foreshadowing of the regime itself. The conference parcelled out the various tasks to teams of “technical experts.” Its work was thus marked by a “far-reaching division of labor, but with a reasonably flexible procedure in which the ultimate control rested with the [internationally appointed] President.”<sup>94</sup>

This relationship between the technical experts and the Drafting Committee led by the international President bears a striking resemblance to the relationship described by Le Corbusier between the architect and her subordinates. The technical experts worked out the fundamental elements required for the solution of particular problems. Such technical expertise, however, could not result in a legal masterpiece any more than the elements of construction discovered by engineers and others could produce an architectural triumph. The “technical experts” were not “experienced draftsmen”; their work, not always based on the same “legal assumptions,” had to be harmonized into a unified document.<sup>95</sup>

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89. *Id.* at 24-25.

90. *Id.* at 1.

91. *Id.*

92. *Id.* at 2.

93. *Id.* at 25. Kaeckenbeek takes particular pride in the fact that this “Convention had 606 articles (the Treaty of Versailles had only 440!).” *Id.*

94. *Id.* at 13.

95. *Id.* at 13.

It was ultimately left to the international President to effect that harmonization, that "single authoritative French document" which would "affect the whole life of that deserving people."<sup>96</sup> The Geneva Convention for Upper Silesia was not merely supposed to revitalize the economic life of the region but to insure its political and cultural harmony. For Le Corbusier, the task of organizing the fundamental forms tested whether one was an "artist" or a mere "engineer";<sup>97</sup> similarly, the creation of the Upper Silesia regime showed whether the President was a "lawyer," in the newly heightened sense, or a mere "technical expert." The modern "primitives"—whether engineers or "technical experts"—provided the fundamental forms, the raw material for the Modernist master to work with. The master, however, was required for the creation of a cultural masterpiece—be it a Modernist building or a comprehensive legal construction like the regime for Upper Silesia, Danzig or the Saar. With her newfound autonomy and innovativeness, the Modernist lawyer would be able to dispense with the traditional devices for assuring international legal "coherence and plausibility."<sup>98</sup>

Indeed, despite its radical "experimentalism," Kaeckenbeeck repeatedly insisted that the regime remained a specifically *legal* creation. This specifically legal quality could be found in its emphasis on innovations in legal doctrine and on the kinds of institutions set up to administer those innovations. In particular, Kaeckenbeeck emphasized the local legal institutions established by the Geneva Convention, the "Arbitral Tribunal" and the "Mixed Commission." These local institutions would play the role of autonomous legal instances coordinating the competing dimensions of international life: the central legal instance of the World Court, the political maneuverings of sovereign states in the League, and the nationalist passions of the populace.

Thus, on the one hand, the creation of local international legal institutions marked, for Kaeckenbeeck, a great advance in international institutional structure; the international community's central organs were too political, its Court too distant, to engage in the requisite inquiries. Kaeckenbeeck laid great stress on the legal procedure of the Mixed Commission, a procedure that included both fact finding and legal ruling. He compared

two very different methods of protection [of minorities]: the diplomatic protection of the League Council, and the local one, before President [of the Mixed Commission] Calonder. . . . President Calonder looked at the whole matter from the point of view of legality and of equity to individuals, whereas the solutions of the Council

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96. *Id.* at 20 (quoting President Calonder of the Drafting Conference, and, later, of the Mixed Commission).

97. LE CORBUSIER, *TOWARDS A NEW ARCHITECTURE*, *supra* note 74, at 201.

98. KAECKENBEECK, *supra* note 86, at 1.

. . . were determined mostly by the parallelogram of political forces.<sup>99</sup>

Ideally, then, the local legal instance would be able to press the centralized international organs, as well as the pertinent sovereigns, into its own service.<sup>100</sup>

On the other hand, the turbulent nature of local minority disputes necessitated an autonomous field for law:

[T]hese nationalist passions were like elemental forces. . . . [W]hat President Calonder needed for his activity was the solid basis of legal principle.<sup>101</sup>

The legal instance that was at once local *and* international was thus the epitome of international legal Modernism. The innovative creation of an autonomous legal instance was made possible by "nationalist passion" and directed toward the creation of a complex, unprecedentedly "detailed," work of international law. Such an instance remained in touch both with its "primitivist" and its experimentalist dimensions by operating on the autonomous, "solid basis of legal principle." In comparison with a local procedure of an autonomous international legal instance, even the World Court could appear as too rooted in traditional notions of the dignity of sovereignty. The local, international institutions boldly asserted creative license to explore the range of specifically legal possibilities, freed from the constraints of an extra-legal positivist or nationalist grounding. International legal Modernism reached its culmination with this desire for the doctrinal and institutional freedom to coordinate the heterogeneous dimensions of international life.

The comprehensive compositions of interwar legal Modernism continue to enthrall the international legal imagination. In the post-World War II period, versions of the Upper Silesia regime have been proposed for intractable nationalist conflicts from Palestine to Cambodia.<sup>102</sup> We international lawyers continue to believe in the ability of such comprehensive Plans to deliver on the dual Modernist promise of liberation *and* order. We must not forget, however, that the ever-present temptation of this sort of Modernist creativity is that of authoritarianism, a temptation to which the first administrators of the League of Nations regime for the Saar succumbed on more than one occasion.<sup>103</sup> I would hasten to add, of course, that authority exercised by international bodies has never taken

99. *Id.* at 534.

100. Unfortunately, Kaeckenbeeck notes, a major problem with the enforcement of minority rights during the temporary regime was precisely the refusal of the Council to accept this role.

101. *Id.* at 361.

102. The first of these postwar Plans, for Palestine, was an imitative tribute to the Upper Silesia regime. It succeeded in preventing war for an even shorter period than its precursor. *See Plan for Partition with Economic Union*, G.A. Res. 181, U.N. GAOR, 2d Sess. (1947).

103. *See, e.g.,* MICHAEL FLORINSKY, *THE SAAR STRUGGLE* 39-44 (1934).

the form of an elite-directed nationalist mobilization; international authorities have generally kept their irony and humanism when they have found temptingly heightened power at their disposal.<sup>104</sup>

In its legal form, the authoritarian temptation arises from the augmentation of the role of the lawyer that follows the specifically Modernist critique of representation. This temptation is far from diminished by the presence of populist elements, such as the plebiscite, in the tool kit of legal techniques; on the contrary, it arises precisely from the paradoxical Modernist composite of deference to the vital, "primitive" energy of the "people," and insistence on the heightened creativity, authority, and novelty of the high-cultural instance. It is this composite that enabled certain cultural Modernists to articulate our most cherished hopes for liberation and others to ignore the horrific quality of some of our century's distinctive ideologies.

In this essay, I have presented the Modernist articulation of three familiar lawyerly roles: specialized adviser, sophisticated judge, comprehensive constitutional designer. In discussing these roles today, we often neglect the cultural assumptions they embody. I have sought to reflect on these assumptions through a particular kind of history-by-juxtaposition. Unlike traditional practitioners of American "law and humanities" studies, however, I am not trying to "enrich" the law with cultural sophistication; rather, I am trying to show how the juxtaposition of law and other cultural domains can shed light on both, and, in particular, highlight the promises and dangers implicit in all forms of Modernism. If, as I would argue, we all remain Modernists (despite our desires for a "post"), we must also seek some critical awareness of its temptations and blindspots. In the 1990's, we are faced with yet another collapse of the imperial structure of central Europe, the resurgence of nationalist passion, and a newly heightened confidence among international statesmen in the nobility and efficacy of complex international plans. I would conclude with the following cautionary note: in our current cultural and political situation, we can only avoid being deafened by the universal clamor for reconstruction by a vigilant historical critique of its rhetoric. By recently resurrecting that historically suspect phrase, the New World Order, the American president has unwittingly reminded us of where the enthusiasm for intellectual and political renewal can lead.

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104. This essay, originally written in the fall of 1990, refrains from any analysis of the implications of the Gulf War.