

Treaty-Making Projects and the Rise of the Everyday Treaty

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Abstract

States today are typically enmeshed in dense networks of numerous treaties that define their obligations toward one another, but this was not always the case. This originated in the nineteenth century, when the frequency of treaty-making increased dramatically. I call this the rise of the “everyday” treaty, and present a new empirical historical analysis of how it came about. Rather than a general “turn to treaties,” during the middle decades of the nineteenth century (from 1820 to 1860), the intensification of treaty-making was largely due to the activities of a small group of five or six actors, who pursued “treaty-making projects” to control international relations on a particular issue or in a geographical region. The essay suggests that this shows the importance of treaties as a flexible and instrumental tool for statecraft, and identifies some key areas for further research on the topic.

Keywords

treaty-making – nineteenth-century international relations – history of international law

The practice of making treaties is as old as recorded history, but it is not timeless. Throughout history there have been numerous changes in how treaties are made, the form that they take, the language they use, the symbolism that surrounds them, and their role within both international and domestic

politics and law. This essay examines one particular change in the practice of treaty-making, which I call the emergence of the “everyday” treaty. In essence, it is an attempt to further our understanding of how treaties became, as David Armitage puts it, “the most widespread, the most fundamental ... ligatures of contemporary international order.”¹ As previous work has shown, the change started during the nineteenth century, when states and other international actors began to make treaties more and more frequently, across an increasing range of issues. After a long period during which the rate of treaty-making appears to have been relatively flat, over the course of the nineteenth century on average “the making of a new international treaty went from being something that happened perhaps twice a month, to something that happened about every other day.”² In short, states and other international actors began to use written, legally-binding agreements more intensively, one might say more routinely, to manage more aspects of their relationships.

Why did they do so? As I will explain in the first section of the essay, scholarship in this area by historians, lawyers, and political scientists has traditionally been anchored in two main lines of argument, which are not incompatible but which suggest rather different general perspectives on the nature of modern world order. One answer is that the turn to treaties was an inevitable by-product of the emergence of a system of territorially sovereign states, which required a decentralized, voluntaristic way of establishing international legal rules; this is part of a broad theme about the shift from naturalist to positivist doctrines in international legal thought that has practically become a cliché in the history of international law. The other answer is that it was a response to the need for more regulations to manage an increasingly complex and globalized world economy, for which treaty-making

1 Armitage, D. “Treaties in Danger? Contemporary Crises of International Order in Historical Perspective.” *Richerche di Storia Politica* 2 (2021), 141.

2 Keene, E. “The Treaty-Making Revolution of the Nineteenth Century.” *International History Review* 34 (3) (2012), 478. This analysis was based on a survey of the treaties collected in Parry, C. (ed.) *Consolidated Treaty Series* (Dobbs Ferry: Oceana, 1969–81), 231 vols. That series begins in 1650 and privileges written treaty texts over other ways of making and recording international agreements. The *CTS* is now digitized at *Oxford Historical Treaties* online, which also includes Randall Lesaffer’s many splendid editorials: opil.ouplaw.com/home/oht. Other quantitative historical surveys have tended to focus on specific topics, such as alliances (see Leeds, B.A. et al. “Alliance Treaty Obligations and Provisions, 1815–1944.” *International Interactions*, 28 (3) (2002), 237–60: atopdata.org); or on types of treaties, notably multilateral agreements: see Denemark, R.A., and M.J. Hoffmann. “Just Scraps of Paper? The Dynamics of Multilateral Treaty-Making.” *Cooperation and Conflict* 43 (2) (2008), 185–219; Glas, A., C. van der Linden, M.J. Hoffmann, and R.A. Denemark. “Understanding Multilateral Treaty-Making as Constitutive Practice.” *Journal of Global Security Studies* 3 (1) (2018), 339–57.

suiting a liberal preference for contractualized relationships. Intensified treaty-making, then, can be explained as a key institution of the modern society of states, and at the same time as a phenomenon of the rise of liberal capitalist modernity. My argument in this essay is not intended as a refutation of either of these accounts, both of which have considerable merit. Rather, my purpose is to carry out a basic task of empirical historical analysis: to examine in detail the specific character of treaty-making during the decades around 1840 (when the turn to increased treaty-making really began), to identify who was actually responsible for making more treaties, and what they were making treaties about. This complements the broad structural orientation of arguments focused on the states-system or liberal capitalist modernity with a more agent-centric analysis, and enables us to consider how well the empirical evidence of intensified treaty-making fits with the grand narratives about the changing nature of modern international order that are usually invoked to explain it.

At the heart of my argument lies a simple observation about the changing pattern of treaty-making during the middle of the nineteenth century: Until at least 1860, there was *not* a general turn towards treaties in the sense that all actors started making increased numbers of written agreements at more or less the same rate across all issues, as one might expect if they were responding to some deep doctrinal or functional imperative. Instead, the increase in the overall number of treaties was initially driven by a very small group of actors (no more than five or six of them) on a limited range of topics, with individual actors often leading the way on treaty-making on a particular issue or in a geographical region, making far more agreements in that sphere than any of their partners or peers. I will call these “treaty-making projects” to capture the way that some actors appear to have deliberately chosen to use sustained bursts of treaty-making activity, usually involving many bilateral agreements with multiple partners, in order to control relationships or reshape the legal framework in a key area. One can identify a few examples of this kind of activity before the French revolution, the most outstanding of which was the remarkably prolific treaty-making of the Dutch *Vereenigde Oostindische Compagnie* (VOC) in Asia, but in the early to mid-nineteenth century we begin to see more of these – such as Prussia’s construction of the *Zollverein*, French treaty-making on extradition, and the British effort to abolish the international slave trade – that had a pronounced cumulative effect on the total number of agreements being made. My description of these as “projects” is intended to recall David Kennedy’s penetrating observation, albeit speaking of a different time-frame than the present enquiry, that in the context of international law and expert global governance “[p]eople pursue projects, pushing one another around on an uneven terrain of powers and vulnerabilities, often using law

to solidify their gains, expose others to risks, or exclude competitors from opportunities.”³ I think this captures very well what was going on in the mid-nineteenth century, when more actors were beginning to appreciate the value of treaties as tools with which to shape the world in their favor and realizing the advantages that could be gained by taking the lead in treaty-making on a specific issue.

When and Why Did People Start Making More Treaties?

When exactly within the nineteenth century should we start looking for signs of the increase in treaty-making? The pivotal moment when we would probably want to place the origin of this development is around the 1840s, towards the end of Reinhart Koselleck's famous “*sattelzeit*.”⁴ Such a periodization is already evident in existing histories of international law and international relations across a range of issues. For example, 1840 has often been said to mark a new phase of treaty-making on extradition when it began to acquire its distinctively modern character.⁵ A similarly-timed shift can be seen in treaties on postal communications: In the three decades before 1840 on average only about two postal treaties were made per year, but that rises sharply to ten per year in the three decades thereafter, prior to the formation of the Universal Postal Union in 1875 (after which it continued at much the same rate for the rest of

3 Kennedy, D. *A World of Struggle: How Power, Law and Expertise Shape Global Political Economy* (Princeton: Princeton University Press, 2016), 5–6.

4 See Fulda, D. “Sattelzeit. Karriere und Problematik eines kulturwissenschaftlichen Zentralbegriffs.” In *Sattelzeit: Historiographiegeschichtliche Revisionen*, eds. E. Décultot and D. Fulda (Berlin: de Gruyter, 2016), 2–15. Admittedly, historians of multilateral treaty-making have proposed the slightly later date of 1850 as the turning-point when this type of agreement started to be made more frequently: Denemark, R.A., and M.J. Hoffmann. “Just Scraps of Paper?” and Glas, A., et al. “Understanding Multilateral Treaty-Making.” However, (a) in this essay I am talking primarily (though not exclusively) about bilateral treaties, which were overwhelmingly responsible for the quantitative shift I am trying to explain; and (b) in any case I am not convinced that 1850 is the right date for marking the decisive change in multilateral treaty-making, which I would be more comfortable placing around the 1870s or 1880s. This is a large subject, and I will not have space to discuss it in detail here, but will touch on it again later in the discussion.

5 Shearer, H. *The International Law of Extradition* (Manchester: Manchester University Press, 1970), 7–10. Shearer attributes this periodization to Martens, F. *Volkerrecht: Das Internationale Recht des Civilisirten Nationen* (1886) vol. 2, 394. The shift is not purely quantitative, since quite large numbers of extradition treaties were made in the late eighteenth century dealing with issues such as military deserters. See Lesaffer, R. “So That Crimes Would Not Go Unpunished: Extradition Treaties in the Eighteenth Century.” *Oxford Public International Law*, <https://opil.ouplaw.com/>.

the century).⁶ The year 1840 has also been seen as a pivotal moment in Euro-African treaty-making, mainly due to British efforts to abolish the slave trade by making significant numbers of treaties with African rulers through initiatives such as the Niger River Expedition of 1841 which was, as Roger Clark puts it, “a banner year for treaty negotiation.”⁷ Nevertheless, even though a lot of specific changes in treaty-making practice seem to coalesce around this time, that does not mean we should begin telling the story in 1840. As Jürgen Osterhammel says, in order to capture “transitional phenomena” it is often wise “to place major events at the middle rather than the edge of their period, so that they are seen from a temporal periphery both before *and* after.”⁸ Here, then, I will focus on treaty-making in the period from 1820 to 1860 in order to try to capture the full story of the change.

To begin with a very broad-brush attempt at a quantitative overview, based on the collection in the *Consolidated Treaty Series*, a total of 10,047 international agreements were made between 1800 and 1900, of which over 90 percent (9,117) were bilateral. This includes all agreements contained in the *CTS*, many of which were not between two sovereign states, but there is very little historical ground for thinking that only states were seen as acceptable treaty-makers in this period. To some degree, that view is a product of a later form of international society, shaped by multilateral organizations such as the United Nations that do make state sovereignty the basic criterion for membership of the system; but this causes problems when projected back in time. For example, the list of members of the states-system most widely used by IR scholars (a dataset created by the Correlates of War program) contains only 32 members for 1840, overwhelmingly in Europe or the Americas, and leaves most nineteenth-century political entities (and most treaty-makers) outside the system altogether in an invisible void.⁹ It may well make more sense to

- 6 The change was quite sudden, rather than graduated over time: Thirty postal treaties were made in the 1830s, compared with 106 in the 1840s (source: *CTS*). The year 1840 was, of course, the date when the new Penny Post was introduced in Britain, at first for inland postal services within the UK only, but the innovation spread quickly: see Zilliacus, L. *From Pillar to Post: The Troubled History of the Mail* (London: Heinemann, 1956); Cotreau, J.D. *Historical Development of the Universal Postal Union and the Question of Membership*, Thesis (University of Fribourg, Switzerland, 1974); Shulman, P. “Ben Franklin’s Ghost: World Peace, American Slavery and the Global Politics of Information before the UPU.” *Journal of Global History* 10 (2015), 215.
- 7 Clark, R.S. “British Anti-Slave-Trade Treaties with African and Arab Leaders as Precursors of Modern Suppression Conventions.” In *Histories of Transnational Criminal Law*, ed. N. Boister (Oxford University Press, 2020), 132.
- 8 Osterhammel, J. *The Transformation of the World: A Global History of the Nineteenth Century*, trans. P. Camiller (Princeton: Princeton University Press, 2014), 56, emphasis original.
- 9 Correlates of War. 2017. “State System Membership List, v2016.” A recent criticism of the historical limitations of the Correlates of War list is Butcher, C.R., and R.D. Griffiths. “States

follow what is currently an increasing practice of thinking of historical treaty-making in the context of “interpolity relations” or “interpolity law,” rather than international relations and international law as traditionally conceived in state-centric terms.¹⁰ Even with this change, however, I would concede that treaty-making as reflected in the *Consolidated Treaty Series* was still a largely European-led practice in this period, and in order to capture it in a more global context we would need to consider a much broader range of relational ties between polities than is encompassed by the collection in the *CTS*. That is beyond the scope of this essay, but unquestionably warrants further empirical historical research.

Leaving these important issues aside for the present, the total of 10,047 agreements in the *CTS* for the nineteenth century represents a more than five-fold increase on the total of just 1,817 treaties made in the eighteenth century, so it seems clear that something changed over the course of the 1800s. To see how this unfolded decade-by-decade, Figure 1 shows that there was a notable bump in treaty-making around the 1810s and 1820s, largely associated with the need to deal with the global turbulence of the Napoleonic wars, the challenges of coalition warfare, and the restoration of international order thereafter. This

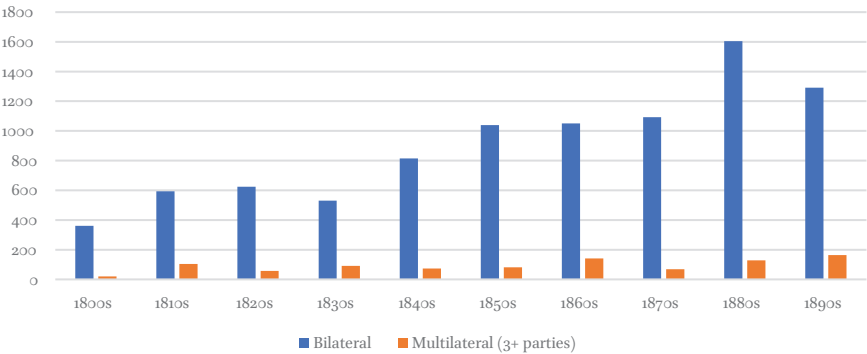


FIGURE 1 Nineteenth-century treaty-making (new agreements per decade)
SOURCE: CONSOLIDATED TREATY SERIES, OXFORD HISTORICAL TREATIES
ONLINE: OPILOUPLAW.COM/HOME/OHT.

and Their International Relations since 1816: Introducing Version 2 of the International Systems(s) Dataset (ISD)." *International Interactions* 46 (2020), 291–308.

10 See, for example, Bartelson, J. *Becoming International* (Cambridge: Cambridge University Press, 2023); and Benton, L. "Interpolity Law." In *The Oxford Handbook of History and International Relations*, eds. M. Bukovansky et al. (Oxford: Oxford University Press, 2023), 320–33. A forceful earlier argument along these lines is Ferguson, Y.H., and R.W. Mansbach. *Politics: Authority, Identities and Change* (Columbia: University of South Carolina Press, 1996).

appears to have been temporary, at least in the sense that the numbers fell back slightly in the 1830s, although never back to eighteenth-century levels. A more sustained trend of increased treaty-making started in the 1840s, accelerating during the last couple of decades after what Osterhammel calls “the 1880s threshold,” a series of interlocking crises and developments including, among other things, wider and more intensive global industrialization and interdependence; the emergence of a new phase of “monopoly capitalism”; and heightened imperial expansion, especially in Africa (which inspired several hundred Euro-African colonial protectorate treaties).¹¹

International relations theorists and historians of international law have already offered some compelling explanations for these changes. Broadly speaking, they fit into two familiar narratives about the nature of modern international order: one to do with the development of the system or society of territorially sovereign states, and the other about the globalization of industrial capitalism and liberalism. I accept that these provide important parts of any account of changes in the practice of treaty-making, but they tend towards rather structural lines of argument, highlighting general features of the ideational or functional background, and this leaves some outstanding questions when we look at specific changes in concrete written agreements in more detail, especially for the middle decades of the nineteenth century around 1840, which I have identified as a crucial turning-point.

The first story explains the growth in treaty-making as due to the rise of the sovereign states-system, which created a need for agreements between territorially-defined domestic jurisdictions to manage their relations with one another since they now lacked any over-arching supra-state authority or legal code. For example, this is a major theme in histories of postal communications, which was the second-most common type of treaty in the period, after treaties of commerce and/or navigation. Lauren Zilliacus argues that states’ heightened sensitivity about their sovereign jurisdiction over their territory made them less amenable to allowing foreign couriers to pass unhindered carrying transnational mail: “Post thus came to be a political question between rulers, something to bargain about and regulate in treaties.”¹² Alongside the

11 Osterhammel, J. *Transformation of the World*, 63–66. On European colonial treaty-making in Africa, see Alexandrowicz, C. *The European-African Confrontation: A Study in Treaty-Making* (Leiden: Sijthoff, 1973); Hébié, M. “The Role of the Agreements Concluded with Local Political Entities in the Course of French Colonial Expansion in West Africa.” *British Yearbook of International Law* 85 (2015), 21–89. After this threshold is when I think open multilateral agreements, rather than merely plurilateral agreements, really began to come into their own (as discussed below).

12 Zilliacus, L. *Pillar to Post*, 166.

emergence of territorial sovereignty as an organizing principle for international order, we also have the move from theories of natural law towards positivist doctrines that emphasized state practice, especially in the form of treaties and custom, as the major source of international law. One of the key elements within this familiar story was the publication of collections of treaties, initially as part of a move to provide appropriate professional training for diplomats in the late seventeenth and early eighteenth centuries, but gradually reaching out to a wider public and impacting on international legal thought. This reached a high point around the end of the eighteenth century with George Friedrich von Martens' famous *Recueil*, described by one commentator as "the greatest source-work of the modern science of international law,"¹³ but one of the most important pioneering earlier works was Jean Dumont's *Corps universel diplomatique du droit des gens*, published in the 1720s, which recognized that, when collected together, treaties could illustrate a "*corps diplomatique*" as an alternative to the "*corps du doctrine*" provided by scholarly treatises such as Hugo Grotius' *De Jure Belli ac Pacis*.¹⁴ Treaty-making now offered a way of shaping the general rules of international law in a new way, rather than just managing a specific relationship, or creating a specific set of rights and obligations between two actors.

The second narrative, while not incompatible with the first, tends to highlight different features of modernity as stimuli towards treaty-making. One key line of argument here is broadly functionalist: The change in treaty-making was an effect of industrialization, globalization, and increased interdependence, which posed what Miloš Vec describes as a new "regulatory challenge."¹⁵ The rapid and increasing pace of industrialization around the globe during the

13 Martitz, F. "Der Recueil Martens: Ein Beitrag zur Literärgeschichte des Völkerrechts," *Archiv des öffentlichen Rechts* 40 (1921), 22.

14 Keene, E. "The Age of Grotius." In *The Routledge Handbook of International Law*, ed. D. Armstrong (London, Routledge, 2009), 126–40. The movement from naturalism to positivism is, of course, a familiar story but is only one way of presenting changes in international legal thought and practice: For a comprehensive analysis see Koskeniemi, M. "A History of International Law Histories." In *The Oxford Handbook of the History of International Law*, eds. B. Fassbender and A. Peters (Oxford: Oxford University Press, 2012), 943–71.

15 Vec, M. *Recht und Normierung in der Industriellen Revolution: neue Strukturen der Normsetzung in Völkerrecht, staatlicher Gesetzgebung und gesellschaftlicher Selbstnormierung* (Frankfurt am Main: Klostermann, 2006), 669. Other examples of this argument are Nussbaum, A. *A Concise History of the Law of Nations* (New York: Macmillan, 1962); Alvarez, J. "The New Treaty Makers." *Boston College International and Comparative Law Review* 25 (2) (2002), 213–34; and Johnston, D. *The Historical Foundations of World Order: The Tower and the Arena* (Leiden: Martinus Nijhoff, 2008).

nineteenth century generated new kinds of connections across borders – railways, telegraphs, and so on – and greater international commercial activity that demanded regulation. Simply put, the increased salience of cross-border transactions and movements required more treaties to manage them and their effects. This is by no means a new argument, and it was recognized already by contemporaries living through the experience. For example, writing in 1903 on the international law of extradition, Henry Biron and Kenneth Chalmers observed that

Extradition as it now exists is almost a creation of the last fifty years. Its somewhat forced maturity was quickened less by moral development than the increased facilities of communication which have converted the most distant nations of yesterday into the neighbors of today The same half-century which has given the world the steamship and the telegraph has increased the number of extradition treaties from three to over forty.¹⁶

This explains not only the increased incidence of treaty-making in the nineteenth century, but also supplies a powerful reason why the frequency of treaty-making has continued to grow, indeed at an even quicker pace, into the twenty-first century.

An alternative line of argument here, but nested within a similar narrative about modernity, looks less at the regulatory challenges to which treaties were a response, and more at the characteristics of the actors who were making them. The main idea here is that the increasing use of treaties to manage international relationships is evidence of a desire to contractualize international society, reminiscent of the shift from “status to contract” that is widely understood to

¹⁶ Biron, H.C., and K.E. Chalmers. *The Law and Practice of Extradition* (London: Stevens and Sons, 1903), 2. The point is argued at some length in Harvard Research in International Law. “Extradition.” *American Journal of International Law* 29 (1935) Special Supplement, 35–38. Biron and Chalmers’ numbers should be treated with some caution, and possibly apply to the UK alone, but their overall picture seems broadly correct: The *CTS* contains several hundred (574) bilateral agreements on extradition made during the nineteenth century, the considerable majority of which (over 400) were made after 1850. Of course, quantification depends on various questions, such as what we count as an extradition treaty: E.g., should supplementary agreements be included? Is any agreement that merely mentions extradition somewhere in its text an “extradition treaty”? Should we only include treaties in force? Should we date a treaty from signature or ratification?, etc. See Keene, E. “Treaty-Making Revolution” for further discussion.

be part of liberal modernity. Emmanuelle Jouannet offers one of the strongest statements of this thesis:

The liberal ideal was that under the aegis of fair rules individuals and states could, through voluntary transactions, reach agreement to cooperate by accomplishing their respective plans. Such contractualization of internal and international relations was what was to better ensure the observance of pluralism and everyone's pursuit of their own personal ends. It was not surprising that Europeans were to impose the treaty, like the contract, on the rest of the planet.¹⁷

The emphasis on liberalism fits well with the belief that the nineteenth century also witnessed the emergence of new rational-legal forms of state, with increased bureaucratic capacity,¹⁸ so that, if globalization provides a reason for increased demand for treaties, the spread of liberalism and rationally organized bureaucracies explains why states were able to supply what was needed to meet Vec's "regulatory challenge." Taking the two of them together, the emergence of the everyday treaty thus appears to slot neatly into the general narrative about the unstoppable global rise of industrial capitalist liberal modernity in the nineteenth century.

These arguments undoubtedly capture a very important part of the process through which we have come to live in a world where treaties are so ubiquitous, but they leave some puzzling questions to answer about the specific processes through which it happened. For a start, there is a question about timing: Why was 1840 such an important transitional moment in terms of the decisive quantitative change in the number of treaties being made? This looks rather late from the perspective of the story about the states-system and positive international law, while it might be a bit early for the story about globalization, industrial capitalism, and liberalism. The timing is not entirely out of step. On the one hand, as noted above, Martens' great *Recueil* was a product of

17 Jouannet, E. *The Liberal-Welfarist Law of Nations: A History of International Law* (Cambridge: Cambridge University Press, 2012), 120. For similar lines of argument, see Reus-Smit, C. *The Moral Purpose of the State: Culture, Social Identity and Institutional Rationality in International Relations* (Princeton: Princeton University Press, 1999); Grewe, W. *The Epochs of International Law* (Berlin: de Gruyter, 2000); Johnston, D. *Historical Foundations*; Koskenniemi, M. "A History of International Law." The idea of a shift from "status to contract" of course has a long lineage in legal history: see Maine, H.S. *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (Cambridge: Cambridge University Press, 2013 [orig. 1861]).

18 Buzan, B., and G. Lawson. *The Global Transformation: History, Modernity and the Making of International Relations* (Cambridge: Cambridge University Press, 2018).

the very end of the eighteenth century, but even so Dumont's recognition of the possibility of a "*corps diplomatique*" still came over 100 years before most statespeople and diplomats appear to have realized the implications for how treaties could be used to make new law. Certainly, Zilliacus' story about how the international post was changed by the development of territorial sovereignty clearly places the beginnings of this shift in the seventeenth or eighteenth century; and yet we do not start to see really large numbers of postal treaties until 1840, at the very earliest.

On the other hand, the globalization story seems to be supported by the fact that the emergence of the "everyday" treaty coincides with the way in which economic historians have described a clear shift between "two distinct epochs" in the world economy, with a break in 1820 after which "world development has been much more dynamic, and more 'intensive.'"¹⁹ As for the liberal contractual version of this story, one might point to the fact that the three leading treaty-makers of the nineteenth century – Britain, France, and the United States – would typically be seen as standard-bearers for these values, and the timing of French liberalization after the 1830 Revolution might provide a direct line of argument to explain why the 1840s were a turning-point: It is certainly the case that French treaty-making increased significantly in that period (as did Britain's). But there are still puzzles here. One, especially for the globalization story, is a question of cause and effect: Which came first, the international railway network, or the railway treaty-network? Although I do not have the space to argue it properly in this essay, I suspect that the pattern may be that as people sensed an opportunity to increase economic development, or possibly pressure to catch up with countries already enjoying rapid industrialization, they realized the desirability of greater integration, and made treaties to enable that possibility; later, as this led to increased cross-border flows of goods, people, and so on, the "regulatory challenge" began to be felt more strongly and this provided a yet further stimulus to even more rapid, and more widely diffused, treaty-making, which is indeed what we see after Osterhammel's 1880s threshold. But that still leaves us with the challenge of understanding the initial turn to treaty-making during the middle decades of the nineteenth century, which played a crucial role in kick-starting the whole process. None of that is to say that industrialization and globalization were not powerful factors promoting the everyday treaty, but it is to reveal a familiar problem where our understanding of what was going on in the nineteenth century is colored by phenomena that really belong to its closing decades,

19 Maddison, A. *The World Economy: Volume I, A Millennial Perspective* (Paris: OECD Development Centre, 2006), chapter 1.

or even later. As Kennedy has remarked elsewhere, talking about the history of international legal doctrine, “[a] search for classical legal thought quickly presents us with an incredible shrinking nineteenth century – most of the “classics” contemporary international lawyers associate with the nineteenth century actually happened in the first decades of the twentieth.”²⁰

Another issue here, for both the globalization and the liberalism versions of this story, is why the shift that we are talking about in the 1840s was almost completely driven by an increase in *bilateral* treaty-making. There were other ways of dealing with the “regulatory challenge” posed by the growth and spread of industrial capitalism in a suitably contractualized way that would be acceptable to liberals. Two obvious alternatives would have been codification and multilateralism, quite possibly in combination. Codification, of course, was a central theme in much utilitarian thinking about international law, and would-be international law-makers of the mid-nineteenth century had before them the impressive example of Napoleon’s *code civile*, which retained its popularity across many countries even after the end of the First Empire.²¹ And yet its real impact on international law appears again to be associated more with the development of a liberal-minded international legal profession during the last couple of decades of the nineteenth-century and the early twentieth than with the period before 1860.²² The story about multilateralism, in terms of both treaty-making and organization-building, also only really picks up later in the nineteenth century. In one of the most sustained quantitative analyses of the history of multilateral treaty-making, Robert Denemark and Matthew Hoffmann argue that “multilateral treaty-making has increased over time, and has been doing so systematically, and exponentially, from the 1850s until quite recently.”²³ Nevertheless, according to the *Consolidated Treaty Series*, the number of new multilateral agreements made in the 1850s was still relatively low (82); in fact, *fewer* multilateral agreements were made in that decade than in either the 1810s or 1830s. The real take-off point for multilateral agreements looks more like the 1860s, or possibly even later, which actually fits

20 Kennedy, D. “International Law and the Nineteenth Century: The History of an Illusion.” *Nordic Journal of International Law* 65 (2996), 389.

21 On the former, see Janis, M.W. “Jeremy Bentham and the Fashioning of ‘International Law.’” *American Journal of International Law* 78 (2) (1984), 412–15; and Cello, L. “Jeremy Bentham’s Vision of International Order.” *Cambridge Review of International Affairs* 34 (1) (2021), 46–64, which also argues that Bentham was keen on diffusing liberal governance internationally through other means. On the enduring importance of the *code civile*, see Halperin, J.-L. *The French Civil Code* (London: UCL Press, 2006).

22 Koskeniemi, M. *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2002), especially chapter one.

23 Denemark, R.A., and M.J. Hoffmann. “Just Scraps of Paper?,” 187.

with Denmark and Hoffmann's observation that the real critical juncture here came from "the emergence of multiple multilateral institutional possibilities – most notably public unions, multilateral conferences, systems of arbitration and multilateral treaty-making."²⁴ Indeed, many of the "multilateral" agreements from before the 1870s might better be considered as "plurilateral," since they look nothing like the open multilateral conventions that have become the hallmark of contemporary multilateralism.²⁵ For example, if we focus specifically on multilateral treaty-making by the United States, prior to 1870 the US made a significant number of multilateral agreements – there are 65 in the *Consolidated Treaty Series*, which amounts to 10 percent of *all* the multilateral treaties contained in that series for the period from 1800 to 1870 – but the overwhelming majority of these were made with Native American nations, since it was not uncommon for the United States to make such treaties with several nations at a time, often with four or five contracting parties: None of these have the constitutional and personality-generating role that are usually seen as the special quality of this type of agreement.²⁶

Thus, while the development of a system of sovereign states and the globalization of industrial capitalism and liberalism were clearly important factors that can help us understand why treaty-making became such a ubiquitous phenomenon in the modern world, they leave us with some questions about what was actually going on in the middle of the nineteenth century, when the turn to treaties seems to have begun. The best way to address these puzzles is to carry out a more detailed empirical analysis of the specifics of treaty-making between 1820 and 1860, asking who was actually leading the turn to treaties, and what were the main issues and regions that saw the bulk of treaty-making activity.

Treaty-Making Projects in the Mid-Nineteenth Century

As I stated in the introduction, an important feature of the growth in treaty-making that we see during the middle decades of the nineteenth century, certainly before 1860 and possibly not until Osterhammel's "1880s threshold,"

24 Ibid., 199. For an excellent study in this area, which treats 1870 as a pivotal moment when liberal principles really began to triumph, see Murphy, C. *International Organization and Industrial Change: Global Governance since 1850* (Cambridge: Polity, 1994).

25 Within the MATRS dataset, "multilateral treaties [are] broadly defined as those that have been signed by three or more actors." Denmark, R.A., and M.J. Hoffmann. "Just Scraps of Paper?," 187.

26 For a more detailed discussion on the differences between bilateralism and multilateralism, as well as Denmark and Hoffmann's work, see Ruggie, J.G. "Multilateralism: The Anatomy of an Institution," *International Organization* 46 (3) (1992), 561–98.

was that it was not uniform: It was not the case that all states started making more treaties on a wider range of issues at more or less the same time. Instead, a relatively small number of states (or other actors) were responsible for a very large share of the increased number of treaties in general. Moreover, while there were of course some common themes (notably in terms of general commercial and navigation treaties, which was the most popular subject for treaty-making among all states) the leaders of the new treaty-making tended to make their treaties on *different* issues or in different regions of the world, effectively monopolizing that specific aspect of treaty-making, but often making surprisingly few agreements in other areas.

Some aspects of this phenomenon have already been noted by historians working on particular issues of international law, who have recognized that in their specific area one particular actor was a key leader, making significantly more treaties than others. For example, the importance of France to treaty-making on extradition was noted by the Harvard Research Program on International Law in 1935, and continues to be repeated in more recent research on the subject.

France took the lead in the development of extradition in the eighteenth century by entering into arrangements with all her immediate neighbors except England France maintained her leadership in this field during two-thirds of the nineteenth century, and in 1868 it appeared that she had 53 treaties of extradition, while England had only 3 and the United States 13.²⁷

What is striking here is not only that France made more treaties on this issue than other actors, but that France made so many more treaties than an actor such as Britain, who might reasonably be considered a peer, and was certainly experiencing similar pressures from the intensification of globalization and international transportation and communications, which, as we have seen, has traditionally been viewed as a major reason for the growth in extradition treaty-making. Yet Britain did not devote much time and effort to securing treaties in this area, at least not in comparison with the French. Of course, Britain was making plenty of treaties, but on other issues, such as the abolition of the slave trade, where the French played a much more marginal role.

27 Harvard Research in International Law. Extradition, 41. See also Shearer, H. *International Law of Extradition*, 17; Blakesley, C. "The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History." *Boston College International and Comparative Law Review* 4 (1) (1981), 51. As I will discuss in more detail in a moment, the focus on France here risks missing the importance of Belgium to extradition treaty-making in this period.

I think that we can see France's leading role on extradition as an example of a "treaty-making project": a deliberate, sustained burst of treaty-making activity, usually involving many bilateral agreements with multiple partners (although sometimes including occasional multilateral agreements), in order to control international relationships and shape the rules of international law in a key area. The hallmark of something that can be considered as a "project" in this way is not only that it involved a large number of agreements, but also that it was conducted by an individual actor which was clearly a leader in making treaties on that particular issue or within a particular geographical region. Another feature of a "project" is its intentionality: The lead treaty-maker deliberately uses written agreements as a mechanism to achieve its goals, possibly by creating a structure of incentives and costs that push other actors to act in the way it wants (as we will see was the case with Prussia's treaty-making project on the *Zollverein*), or to establish a general international legal regime for the same ends (as, for example, with the British project on the abolition of the slave trade). Although I see these features as very important to the concept of a "treaty-making project," I will not have the space to go into each nineteenth-century project in detail in terms of the underlying intentions of its architect, and this again is a topic that would warrant further investigation. More research in that area might also help to answer a crucial question about the extent to which there were connections between these different projects, especially to explore the intriguing possibility that actors were actively learning from one another about the potential of treaty-making to shape international relations in their preferred direction.

I should make it clear that I am not suggesting that this specific mode of treaty-making originated only in the mid-nineteenth century. On the contrary, there were important earlier examples of this kind of activity in the eighteenth century, as suggested by the above comment on France and the pre-revolutionary beginnings of its extradition treaty-making regime in the eighteenth century. An even better example from that period is that, as Peter Sahlin has noted, the French *ancien regime* undertook a project to abolish the *droit d'aubaine* through a series of almost seventy reciprocal bilateral treaties with other European rulers in order to create a more attractive environment for foreign capital investment, which only came to an end after the Revolution when the new National Assembly chose to unilaterally abolish the *droit* as part of its general assault on feudal privileges.²⁸ Another largely

28 Sahlin, P. *Unnaturally French: Foreign Citizens in the Old Regime and After* (Ithaca: Cornell University Press, 2004); Wallenius, T. *The Liberal Myth: Foreigners' Property Rights and the Making of Modern World Politics*, D.Phil. Dissertation, the University of Oxford, 2018.

eighteenth-century treaty-making project, even more significant in terms of the sheer number of treaties involved, was the effort by the Dutch *Vereenigde Oostindische Compagnie* (VOC) to establish and extend its influence in Asia, by making several hundred agreements with local rulers.²⁹ The scale of this latter project should not be understated: Between the Peace of Westphalia and the French Revolution, the VOC was the most prolific treaty-maker in the world, making around 450 agreements; France was a close second, but no other single actor, not even the Great Powers of the time, made more than half as many treaties as the VOC, and most made far fewer than that.³⁰

The key feature that distinguishes the mid-nineteenth century from the eighteenth century in this respect is the increased number of such projects and the actors carrying them out; it was still by no means a generalized practice, but it had begun to go beyond the isolated examples of the VOC in Asia or France and the *droit d'aubaine*. In addition to the French project on extradition noted already, I think that it is possible to identify at least five more significant treaty-making projects that were carried on between 1820 and 1860, even if they were not exclusive to that period: Prussia's creation of the *Zollverein*, which was established in 1834; the British-led attempt to abolish the international slave trade; the United States' dispossession and relocation of Native American nations; the British East India Company's growing commercial and political influence in Asia, where it effectively took over the VOC's previous role in that respect (the VOC had ceased to exist at the end of the eighteenth century); and French treaty-making on postal and telegraphic communications.³¹

29 On the imperialist context of treaty-making, see Belmessous, S., ed. *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford: Oxford University Press, 2015); on the role of actors like the VOC, see Phillips, A., and J. Sharman. *Outsourcing Empire: How Company-States Made the Modern World* (Princeton: Princeton University Press, 2020).

30 VOC treaty-making in this area began well before the Peace of Westphalia, and especially in its earlier years cannot simply be understood as a European-led project. For example, see Borschberg, P. "Cornelis Matelief, Hugo Grotius, and the King of Siam (1605–1616), Agency, Initiative and Diplomacy." *Modern Asian Studies* 54 (1) (2020), 123–56. Again, as I have noted previously, much more work needs to be done on a genuinely global historical approach to the making of international agreements, and my use in this essay of the *CTS* collection may slant the analysis in a Eurocentric direction.

31 Like French extradition treaty-making, some of these began well before 1820. For example, U.S.-Native American treaties go back to the beginning of the Republic (with plenty of colonial treaty-making before that). The key date in terms of U.S. treaty-making practice here is also outside the range of this study: 1871, when Congress removed the power of the executive to make treaties with Native American nations (although treaty-like "ratified agreements" persisted for some time). For a general quantitative survey, see Spirling, A. "U.S. Treaty Making with American Indians: Institutional Change and Relative Power, 1784–1911." *American Journal of Political Science* 56 (1) (2012), 84–97.

The importance of these to wider patterns of treaty-making in general was considerable. The five actors mentioned above – the United Kingdom, France, the United States, Prussia, and the British East India Company – were involved as at least one of the contracting parties in more than half (58 percent) of *all* the bilateral treaties made globally between 1820 and 1860, and collectively their networks included no fewer than 91 percent of all the entities who were parties to at least one treaty. In fact, 69 percent of all the actors who made a treaty during the period *only* had treaties with one or more of the five, and were thus part of no other treaty-networks, which was largely a consequence of the dominant roles played by Britain, the United States and the East India Company in treaty-making within Africa, North America and Asia respectively.³²

Since these five actors played such an important role in treaty-making as a whole, it is worth taking a closer look at their overall profiles before examining the specific projects they undertook. Britain and France dominated bilateral treaty-making generally throughout the nineteenth century, and also in the four decades under discussion here: Between 1820 and 1860, each made over 500 treaties. The United States and Prussia were the next most prolific, with 355 and 304 treaties respectively. Among the five leading actors identified above, the East India Company was significantly less active in total (its 119 treaties place it only twelfth among all actors in terms of the total number made between 1820 and 1860), but I include it here because of its unique significance to treaty-making in Asia, where it was a party to 60 percent of all the agreements made between 1820 and 1860. The British government itself was the next most active treaty-maker with Asian rulers, but it accounted for only 14 percent of all the agreements made there, so the Company really was by some distance the dominant player in the region. After Prussia, the only other actors to make more than 200 treaties across the four decades analyzed here were Belgium (256), Austria (225), and the Netherlands (210). Belgium is an interesting case that definitely warrants further study, since one should take into account the fact that the state only came into existence in 1831. Allowing for that, its annual rate of treaty-making was close to Prussia's, with each state making on average around eight or nine treaties per year (sometimes much more frequently). Although its role in this respect is seldom taken seriously by

³² As I noted earlier, the list of international system members conventionally used by IR scholars includes a relatively small number of states during this period (23 in 1820, of which only two – the United States and the Ottoman Empire – were non-European; and 44 by the end of the period), an alternative analysis of treaty-parties unsurprisingly reveals many more: 491 in total, of whom 453 had treaties with at least one of the six actors mentioned above.

historians of extradition, Belgium rivaled France in terms of the intensity of its treaty-making on extradition in particular.

Figure 2 breaks down decade-by-decade the overall treaty-making patterns of the most active six states during the period, as well as the East India Company, in order to give a more detailed picture of the chronological development of their activities.

As we see here, Britain and France's decisive lead over other treaty-makers was actually not established until the 1840s, although both countries experienced a real take-off after that point, which goes some way to explaining why 1840 looks like such a pivotal moment in the wider trend. Nevertheless, in the 1820s and 1830s both Prussia and the United States actually made more treaties than either Britain or France, with Prussia the global leader in the 1820s (as it created the treaty-network that formed the basis for the *Zollverein*), and the United States taking that role in the 1830s (thanks to the very large number of treaties it was making with Native American nations).

While this small group of actors was responsible for the bulk of treaty-making in the world as a whole, their treaty-making profiles – whom they made treaties with, and on what issues – are quite different. Let us start with the “whom”: One of the simplest ways to illustrate the main differences here is by comparing the geographical regions where these actors made their agreements (Table 1).

What we see here is that, although Britain and France made very similar overall numbers of treaties in this forty-year period (520 and 517 respectively), their global coverage was very different. Two-thirds of France's treaties were made with other European partners, more than double the figure for Britain.

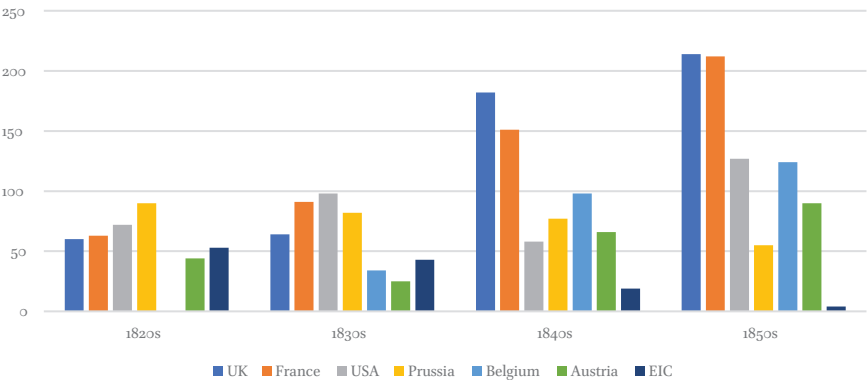


FIGURE 2 Selected treaty-makers, 1820–60 (new agreements made per decade)
SOURCE: CONSOLIDATED TREATY SERIES, OXFORD HISTORICAL TREATIES
ONLINE: [OPIL.OUPLAW.COM/HOME/OHT](https://opil.ouplaw.com/home/OHT).

TABLE 1 The geographical distribution of treaty-making, 1820–60

Treaty-maker	% of leading treaty-makers' treaties made with partners in region				
	Africa	Americas	Asia	Europe	MENA
Britain	40%	17%	5%	32%	6%
France	12%	16%	1%	67%	3%
United States	–	74%	4%	21%	1%
Prussia	–	1%	–	99%	–
East India Co.	–	–	91%	–	9%

SOURCE: CONSOLIDATED TREATY SERIES, OXFORD HISTORICAL TREATIES ONLINE: OPIL. OUP.LAW.COM/HOME/OHT.

On the other hand, Britain was much more active in treaty-making in Africa: In fact, they made more agreements with partners in Africa (40 percent of their total) than in any other geographical region, including Europe; by comparison, 12 percent of France’s treaties were made with African partners, which is significantly more than any other state, but still far behind the British total. This by itself illustrates just how important the anti-slave trade treaty-making project was to British treaty-making as a whole, since that was the main reason behind its remarkable drive towards treaty-making in Africa, especially in the 1840s and 1850s. The United States also had a distinctive profile, reflecting the overwhelming importance during this period of its treaty-making project with respect to managing its relations with Native American nations: Just over half of all the treaties the United States made between 1820 and 1860 were with Native American nations, whereas a much smaller percentage – only about one-fifth – were with European states, suggesting that the impact of global industrial liberal modernity had not yet begun to be felt in that respect at least. Finally, perhaps less surprisingly, all of the East India Company’s treaties were with partners in Asia or the Middle East; the Prussian treaty-network was almost exclusively European.³³

33 I believe that the only exceptions among Prussian bilateral agreements across the entire four decades (with Prussia, rather than, say, the *Zollverein* or the German Confederation as a contracting party) were three commercial treaties made in 1827 with Brazil, 1828 with the United States, and 1831 with Mexico. By contrast, Britain made 32 treaties with Brazil, Mexico, and the United States over the period.

As well as differences in where and with whom these actors were making treaties, we also see variation in the issues on which they were making treaties. I have already noted that this was the case for extradition treaties, where legal historians have long attributed the leading role to France, and have noted the very significant differences between France and other states such as Britain and the United States on this particular issue. Something similar was the case for postal treaty-making, where again France took the lead. Between 1820 and 1860, France made 93 postal treaties, far more than anyone else: The UK was second with 53; Belgium, Austria, and Prussia lagged well behind (39, 31, and 27 postal treaties respectively), despite the density of their European treaty-networks in other respects, and despite their lead over France in the development of other major communications technology such as railway-building.³⁴ France also had a decisive lead on treaties dealing with telegraphic communications: It made half of all the treaties on this issue agreed before 1860 (19 out of 39). The focus of other countries' treaty-making was similarly issue-specific. United States' treaties with Native American nations were, of course, focused on issues about land ownership and use that were specific to that particular region and relationship. The extraordinary flood of British treaties with African partners, with over 170 agreements made in the 1840s and 1850s, almost entirely reflects the effort to abolish the slave trade, for which treaty-making with African rulers was an essential part of the abolitionists' plan.³⁵ No other country even began to approach the level of activity of the British on this particular issue, despite its very significant implications for naval intervention in maritime commerce generally, which led the British to adopt institutions such as mixed commissions to accommodate the interests and sovereign dignity of certain states on the issue.³⁶

Each of the mid-nineteenth-century treaty-making projects I have identified here has already been the subject of intensive historical study in its

34 Railway networks developed more rapidly within and between the German states than in France during the early years of the new technology: see Wolmar, C. *Blood, Iron and Gold: How the Railways Transformed the World* (London: Atlantic Books, 2009), chapter two. The high-point of railway treaties comes a little late for the analysis in this essay, but in any case, unlike postal and telegraphic communications, this does not appear to have been an issue where there was one outstandingly prolific treaty-maker: many states made rail treaties at roughly similar rates.

35 See, for example, Buxton, T.F. *The Remedy* (London: W. Clowes and Sons, 1840), 10–23.

36 Keene, E. "A Case Study of the Construction of International Hierarchy: British Treaty-Making Against the Slave Trade in the Early Nineteenth Century." *International Organization* 61 (2) (2007), 311–39.

own right, but seldom if ever in combination as examples of a certain kind of approach to treaty-making. Nevertheless, it is possible to identify some common themes in the historical literature, principally to do with the desire to shape the international legal and political environment in a key area, often in a highly strategic manner. For example, rather unsurprisingly, one result of France's leading-role in extradition treaty-making is that "[t]he modern extradition treaty is greatly influenced in its language, scope and structure, by the French approach," and France is said to have initiated crucial principles, such as exemptions for political offences and limitations on the grounds upon which people may be extradited to the specific issues covered by treaty law in that respect.³⁷ The Prussian *Zollverein* project was even more obviously strategic: David Murphy, for example, argues that it was "overtly political from the first" although he challenges the traditional view that Prussian policy here was primarily seeking to exclude the Habsburg Empire from German affairs, arguing instead that it was "directed at France and the smaller German states, not Austria."³⁸ The end of this project was the construction of a customs union that may appear a pioneering example of multilateralism, but Prussia was the key agenda setter in the process and deliberately chose a sequential bilateral framework for bargaining with other German states in order to arrive at this outcome. By gradually incorporating smaller German states into its customs union, those left outside at any given moment within the process found themselves facing increasing commercial and financial costs; when they eventually came to accede, "Prussia was therefore able to extract significant concessions with regard to political power and membership rights."³⁹ These were, of course, treaty-making projects undertaken by leading states within Europe. Beyond Europe, the strategic aims of treaty-making were even clearer. The United States' treaties with Native American nations, for example, were often negotiated under highly unequal terms, and while they did often give important claims to Native Americans that continue to shape those relationships, one general survey concludes that they "were key instruments in the recurrent dispossession of Indians."⁴⁰

37 Blakesley, C. "Practice of Extradition," 60, and see 51.

38 Murphy, D.T. "Prussian Aims for the Zollverein, 1828–1833." *The Historian* 53 (2) (1991), 287.

39 Ploechel, F. "The Zollverein and the Sequence of a Customs Union," *Australian Economic History Review* 55 (3) (2015), 293.

40 Galloway, C.G. "Treaties and Treaty-Making." In *The Oxford Handbook of American Indian History*, ed. F.E. Hoxie (Oxford: Oxford University Press, 2016), 544.

Conclusion

Where do these empirical observations leave us in terms of our understanding of the reasons why, to use Armitage's words again, "we all became global Gullivers, so thoroughly enmeshed in so many treaties"?⁴¹ We have seen that the journey from a world with relatively few treaties to one saturated by them initially ran through a mere handful of actors, who realized that they could dominate and shape specific aspects of international order within a certain area by embarking on treaty-making projects. During the middle of the nineteenth century, across an eclectic range of issues and regions, five actors – Britain, France, the United States, Prussia and the East India Company – each set out to make a large number of (usually) bilateral agreements with multiple partners in order to control relationships and determine the rules of international law on a specific topic. In so doing, just these five actors accounted for over half of all the treaties made in the world during this period. This suggests that conventional explanatory narratives about law-making in a states-system or the "regulatory challenge" of liberal capitalist globalization do not tell the whole story, even though they may capture something important about the broad structural or environmental factors that encouraged more intensive treaty-making. One of the reasons for the increased intensity of treaty-making was that treaties were valuable tools that actors could use to achieve their goals, "pushing one another around on an uneven terrain of powers and vulnerabilities ... using law to solidify their gains." Treaties are remarkably flexible and effective instruments for shaping what Kennedy calls the "cartography of power,"⁴² and the ability to take a lead on treaty-making in a certain area can be a formidable source of what we might call "network power" in international relations.⁴³

In this essay I have tried to introduce this idea of a "treaty-making project" as a way to deepen our understanding of historical changes in the practice of treaty-making, but there are several ways in which this enquiry could be extended. In the first place, the comparative analysis of these projects and the actors who carried them out requires further study in order to explain why they developed as and when they did. I have not, for example, been able to investigate whether there were direct connections between them, in the sense that actors were learning from one another about the role that this approach to

41 Armitage, D. "Treaties in Danger?," 142.

42 Kennedy, D. *World of Struggle*, 19.

43 See Hafner-Burton, E., M. Kahler, and A.H. Montgomery. "Network Analysis for International Relations," *International Organization* 63 (2009), 559–92.

treaty-making could play in achieving certain strategic goals. It would also be interesting to look more deeply at why these five actors were the ones to initiate treaty-making projects in this period, and why others (such as perhaps Austria or Russia) were not. As I have noted above, it would also be worthwhile to look more closely at Belgium, as an example of a relatively new state, and one that was clearly not a great power and even had its sovereignty compromised in various ways by the great powers of the time, but yet engaged in treaty-making at a level comparable to at least some of the five leading actors.

Another way in which some of these further questions might be taken on would be to explore the individuals within states or polities who were most directly responsible for initiating a particular treaty-making project, whereas thus far I have only talked in broad terms about states such as Britain or France as international agents. I would suggest that one reason why treaties were an attractive strategy in the middle of the nineteenth century for projects like the construction of the *Zollverein* or the abolition of the slave trade was because they could be launched relatively easily and cheaply, and often with little scrutiny from other organs of the state. Although legal procedures for ratification of treaties, or their incorporation into domestic law, differ from one state to another, treaties are usually at the very least negotiated and signed by the executive, and it is significant that they offer a pathway to law-making that is in that respect external to domestic legislatures. For the period under consideration here, these executives were usually quite small, and had not yet developed the larger bureaucratic structures that we associate with twentieth- or twenty-first-century governments. Sometimes, it appears that governments more generally were not always completely in control of, and perhaps not even aware of, treaties that were ostensibly being made in their name. This created an opening for what one might call an entrepreneurial approach to international relations, where small groups of people either located in or with access to the executive branch of government could initiate a treaty-making project by themselves, with little accountability to authorities in either the executive or legislature.