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History

Between Law and Diplomacy:

International Dispute Resolution in the Long Nineteenth Century

Abstract

From late in the eighteenth century through World War I, states increasingly resolved their differences through arbitration; entering into over 1000 agreements to address past controversies and provide for future disputes. Rather than relying entirely on traditional diplomatic methods, states responded to the practical needs of an increasingly complex, commercial, and bureaucratic world. They used mechanisms with some legalistic components; although these procedures remained under political control. Arbitration never prevented a war; the efforts of the Anglo-American peace movement, later augmented by continental activities and the rise of the international legal community, had but small and indirect effects. While appearing responsive to the new influence of public opinion, states only made agreements to arbitrate that were highly controlled and which typically encompassed only relationships and parties for whom war was already quite unlikely. Western powers also extensively used arbitral agreements to resolve and protect their imperial interests, both formal and informal.

The traditional historiography of this field has been skewed by its emergence out of that peace movement, with its millennial, liberal, Eurocentric, and juridical biases. As a result, the significance of the Vienna settlements in launching the modern arbitral process has been overlooked, the Jay Treaty and the “*Alabama* Claims” case have been mythologized, the distinctive role of Latin American states has been sidelined, and the meaning of the Hague Conferences has been misunderstood.

States are political animals and their “states’ system” was effective in using arbitration as a shared tool while preserving their essential political discretion and managing their domestic and international publics.