Neutrality in International (Dis)order: a Conceptual History

By

Monika Kubová

Submitted to

Central European University

Doctoral School of Political Science, Public Policy, and International Relations

Word Count:
70244

In partial fulfilment of the requirements for the degree of Doctor of Philosophy in Political Science

Supervisor: Professor Alexander Astrov

Vienna, Austria
2024

Declaration

I, undersigned Monika Kubová, candidate for the degree of Doctor of Philosophy at the Central European University's Doctoral School of Political Science, Public Policy and International Relations, hereby declare that this dissertation contains no materials accepted for any other degrees, in any other institutions. The dissertation contains no materials previously and/or published by any other person, except where appropriate acknowledgement is made in the form of bibliographical reference, and that no part of the thesis is infringing on any person's or institution's copyright. I declare that this dissertation is based exclusively on my own work and independently conducted research.

Vienna, 15th May 2024

Monika Kubová

Abstract

This thesis looks into the nature and role of neutrality in international order through the lens of conceptual history. By tracing the life of the concept from the late medieval period until present day, I identified four forms of neutrality: the strategic, legal, ethico-normative, and political form. These forms were conceptualised as a product of the specific historical conditions of European societies to address different problems of cooperation and conflict, reflecting broader changes in the international order over the centuries. While the concept of neutrality is currently contested and in the process of transformation, looking at the current articulations of this concept in the context of War in Ukraine through the framework of these four forms gives a better grasp of the process of institutional contestation itself and how we can make sense of it. This framework also highlights that the repertoire of conceptualisations of institutions, such as neutrality, remains to a considerable extent constrained by their past articulations which can be re-traced through a macro-historical analysis. Redefining the debates of both scholars and practitioners through the framework of four forms of neutrality allows to grasp how the process of contestation unfolds on the level of governmentality and different forms of sovereignty, which is characteristic of the contemporary (dis)order.

Acknowledgements

There are many people to whom I owe a debt of gratitude for supporting me and helping me out during my doctoral studies, which involved much more than just writing a dissertation.

First of all, I would like to thank my supervisor Alexander Astrov for his support and loyalty throughout the years. Thank you for always being available to help when I needed it, for pushing me towards more ambitious goals, and for helping me navigate this work into its final form. Many of the ideas that made it into the thesis come from our conversations and your input, and I am deeply appreciative of this.

I would like to further thank my supervisory panel members Matthias Riedl for his very helpful comments on the first three chapters of this thesis, and Michael Merlingen for not only his feedback on the thesis but also for being a great head of the DSPS, always willing to show understanding and offer a helping hand.

I owe a huge debt of gratitude to the CEU PhD gang who shared with me many of the difficult but also joyous moments of this journey. A special thank you goes to Freya Cumberlidge, who has been an indispensable part of this journey as a wonderful friend, co-conspirator, and the biggest supporter throughout the years. Finishing this thesis in its current form would not be possible without you. I want to thank Martino Comelli for his energy and revolutionary spirit and Pedro Perfeito da Silva for his ever-positive and easy-going vibe, which made the years in Budapest fun. Thank you to Ruth Gazso-Candlish for always welcoming me in Budapest and offering support through the years. Thank you, Viktoriia Poltoratskaya for the joy and kindness you always brought with you, brightening the days in our lab. Thank you Hong Do for sharing delicious meals and great conversations with me. The thoughtfulness and adventurousness of Sunna Kokkonen have been a source inspiration and support for which I'm grateful. The wonderful times at Staudingeragasse we had with Ivana Zimberk after moving to Vienna are precious. I want to also thank Malte Reske for the comments and wonderful conversations which inspired.

I'm also very thankful to all the friends and colleagues from the (C)loud lab: Natalia, Lilia, Mehmet, Ihor, Giancarlo, Thomas, Barbora, and Julian with whom I shared many wonderful

memories in Vienna. And to all the friends and colleagues with whom I had a great time in Budapest (and with some also in Vienna): Reka, Giorgia, Daniel, Utku, Azad, Peter, Krystof, James, Elisabeta, Jackie, and Nassim. Thank you also to Erzsebet and Ceren for the inspiring times at the Global Politics and Practice research group. A special mention goes to David Smrcek who provided access to quite a few of my sources. Last but not least, I want to thank our coordinators Monica, Ingy, and Eszter for providing the best administrative support one could ask for, and much more than that!

Anatoly Reshetnikov has been a pedagogical and academic inspiration. Thank you for your friendship and support throughout the years. I learned a lot from you.

I would like to further express my gratitude to Iver Neumann for hosting me at the lovely Fridtjof Nansen Institute in Oslo and for providing feedback on some of the chapters. I have also benefitted from comments and support offered by Halvard Leira, Julia Costa Lopez, and Einar Wigen, and from the participants of workshops and conferences where some of the thesis chapters were presented. A special thank you goes to Benjamin de Carvalho who made it possible for me to participate at ISA 2024.

A crucial part of this PhD journey was also the unconditional support I received from my family and the long-lasting friendships of my Bratislava gang, Roman, Veve, Miška, and Simča. Thank you also goes to Romča for being a great friend and a concert buddy in Vienna. I am also grateful to Aliaksei Kazharski for encouraging me to apply to CEU and to further pursue my doctoral studies there, and for believing in me.

Finally, this thesis would not be possible without the institutional and financial support from the Central European University and the Visegrad Fund.

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Introduction

Following the end of the Cold War, the concept of neutrality gradually disappeared from the vocabularies of practitioners, with scholars claiming its death and irrelevance.[1] However, in the recent decade, neutrality has experienced something of a revival, gaining attention in the context of a series of 'crises' and wars that have been perceived as symptomatic of the decline of the post-Cold War order and its ongoing transition. In light of this, some states rehabilitated their neutral or non-aligned position, while others have abandoned or condemned its place in the international order, leading to discussions and contestations about its nature and function in the international order.

The beginning of this conceptual contestation and transformation can be traced to the period around 2014 and the annexation of Crimea by Russia, which escalated in 2022 into a full-scale war as Russia invaded Ukraine under the pretext of protecting Russian-speaking minorities against threats from NATO. Since 2014 neutrality has thus been re-introduced into the vocabularies of politicians in this context, stirring up academic and expert discussions about its renewed relevance. As the conflict unfolded into a full-scale war over the years, it led to the proliferation of a number of different meanings attached to the concept of neutrality by various actors, seeing it either in a positive or negative light.

The leadership of Belarus, among others, has revived the rhetoric of neutrality and non-alignment emphasising its peaceful mission as a bridge-builder to mediate the conflict, organising a number of peace summits that resulted in the (now obsolete) Minsk Agreements. At the same time, the 'crisis' in Ukraine also led to debates about the possibility of neutralization or 'Finlandisation' of Ukraine as a means of survival for a small country 'in the shadow of larger and stronger neighbors'.[2] Finlandisation, Macron claimed was also 'one of the models on the table' which could serve as a means of diffusing tensions with Russia.[3] Stephen Walt similarly suggested in an op-ed for *Foreign Policy* that the solution to the 'crisis' was convincing Russia that the US and its allies want to make Ukraine 'a neutral buffer state in perpetuity'.[4] Neutralization of Ukraine was thus envisaged as a solution for the crisis of the

[1] Michael Cox and Roger Mac Ginty, "Farewell to a Beautiful Idea: The End of Neutrality in the Post-Cold War World," in *Small States and the Security Challenge in the New Europe*, ed. Werner Bauwens, Armand Clesse, and Olav F. Knudsen, Brassey's Atlantic Commentaries 8 (London, Washington: Brassey's, 1996).
[2] René Nyberg, "Finland's Lesson for Ukraine," *The New York Times*, September 2, 2014, https://www.nytimes.com/2014/09/03/opinion/finlands-lesson-for-ukraine.html.
[3] Emmanuel Macron in Cora Engelbrecht, "'Finlandization' of Ukraine Is Part of the Diplomatic Discourse. But What Does That Mean?," *New York Times*, August 2, 2022, https://www.nytimes.com/2022/02/08/world/europe/ukraine-russia-finlandization.html.
[4] Stephen M. Walt, "Why Arming Kiev Is a Really Bad Idea," *Foreign Policy*, February 9, 2015,

post-Cold War order that would not only guarantee Ukraine's survival but also stabilise the relations between the great powers.

Another chapter of neutrality unfolded following the full-scale invasion of Ukraine in 2022, as the 'former neutrals' Finland and Sweden decided to abandon their neutrality and join NATO. This has been accompanied by claims that neutrality is obsolete in the 21st century as it was viewed as something of an immoral choice. As the policy analyst Franz-Stefan Gady argued, it was only a question of time until neutrality becomes a security risk for these states. Finland and Sweden's abandonment of neutrality was a sign of its obsoleteness, and future military crises will have to be managed through a common security and defence policy of the European states, to which neutrality was an obstacle, the author argued. Neutrality would inevitably become a security threat not only for the neutral state itself but also for the unity of the whole bloc, thus weakening the position of the EU.[5] The Ukrainian government and Volodymyr Zelensky himself were equally, if not more, critical towards countries pursuing neutrality following the failed peace talks with Russia. In his formula for peace, neutrality of other states was seen as an unacceptable way to peace. Neutrals' interest in others' problems were portrayed as being only a formality and pretence, with these states sympathising 'only for protocol'.[6] Zelensky argued that this pretence of protecting someone while pursuing their own interests in fact 'creates the conditions for war'.[7] Neutrality was not simply impractical, but also an unethical and dishonest choice. There is no space for neutrality in the contemporary international order, according to some.

As discussions about the way we should make sense of the transition or crisis of the international order are ongoing, it is important to ask how we can explain the ongoing contestations over the meaning of neutrality in this context. This implies not only looking into how these contestations are conditioned by different understandings of the order but also how the contestations over neutrality themselves condition how the order is re-constituted. Many of the meanings and positions towards neutrality which have proliferated in recent years are in fact not new and have been invoked and re-dressed, time and time again throughout the history,

https://foreignpolicy.com/2015/02/09/how-not-to-save-ukraine-arming-kiev-is-a-bad-idea/.

[5] Franz-Stefan Gady, "Why Neutrality Is Obsolete in the 21st Century," *Foreign Policy*, 04 2024, https://foreignpolicy.com/2023/04/04/finland-sweden-nato-neutral-austria-ireland-switzerland-russia-war/.

[6] Volodymyr Zelensky, "Speech by the President of Ukraine at the General Debate of the 77th Session of the UN General Assembly," *President of Ukraine*, September 22, 2022, https://www.president.gov.ua/en/news/vistup-prezidenta-ukrayini-na-zagalnih-debatah-77-yi-sesiyi-77905#:~:text=They%20sympathize%20only%20for%20protocol,to%20create%20conditions%20for%20peace.

[7] Volodymyr Zelensky, "Speech by the President of Ukraine at the General Debate of the 77th Session of the UN General Assembly," *President of Ukraine*, September 22, 2022, https://www.president.gov.ua/en/news/vistup-prezidenta-ukrayini-na-zagalnih-debatah-77-yi-sesiyi 77905#:~:text=They%20sympathize%20only%20for%20protocol,to%20create%20conditions%20for%20peace.

while being embedded within different understandings of order and the role of neutrality in world politics. This brings to the fore the relevance of historical inquiry in making sense of the present discussions of neutrality and its changing nature.

This research therefore asks the following questions: How can we make sense of the disappearance, reappearance, and transformation of the concept of neutrality in relation to the international order? What is the role of neutrality in the international order? How can we understand the current debates and contestations of the concept of neutrality through its history?

My dissertation discusses these research questions through a macro-historical perspective by tracing the life of the concept of neutrality and its co-constitutive relation to the international order. It focuses on the co-dependency of neutrality's conceptualisation on the social and political structures of a given period, while at the same time analysing how the different layers of the concept which were acquired throughout the centuries informed and continue to inform struggles over its meaning and role in the international order. By tracing the life of the concept from the late medieval period until present, I argue that there are four different forms of neutrality that continue to be modified and reified in the processes of contestation.

Theorising neutrality in the international order

When considering accounts of neutrality in the International Relations literature that discusses the nature of the relation of neutrality to the international order and explain its relevance, we can broadly define four different forms. These four forms inform both, the way this literature is organised, but also the structure of the thesis itself. The first form corresponds to the strategic significance of neutrality as a choice for securing the survival of the state, the second one pertains to the rights and duties associated with legal structures and how they serve to contain the scale of violence by putting limitations on the conduct of war, the third one concerns the role of neutrals as a 'critical conscience' of the international society as facilitators of peace, and the fourth one corresponds to neutrality's capacity as a driver of change on the level of international order and on the level of concepts.

The strategic form of neutrality can be found in the IR literature in theory of classical realism of Hans Morgenthau and it was linked to the conditions of balance of power which allowed neutral to pursue this policy as a means preserving its security. This idea was for the

first time introduced in his article *The Problem of Neutrality* in the late 1930s. The impossibility of the balance of power, and by the same token of neutrality, was for Morgenthau caused by the Nazi and Fascist regimes being equipped with superior military power that eliminated the geographical advantages of neutrality and the totalitarian political philosophies dismantling of the 'ethico-legal delimitations of the political sphere itself'.[8] The condition of neutrality for Morgenthau was the system of balance of power when 'the opposition of various almost equally strong groups of Powers, which either have no interest at all in including the neutral state in the Power combination or whose interest cannot prevail against the fear of the risk that might result from this inclusion'.[9] The disturbance of the balance of power replaced by a hegemonic or semi-hegemonic relationship did not allow for neutrals to become a powerful element counter-balancing other states. In this sense it was the nature of the international order, which was imbalanced, making neutrality increasingly infeasible.[10]

During the Cold War, Morgenthau modified the conditions of possibility to incorporate also nuclear weapons, arguing that the US nuclear monopoly in the first years of Cold War made neutrality again non-feasible. The international order conceived in terms of unipolarity was not conducive to neutrality because of the system that magnetically pulled all the states of the second and third rank towards the pole. It was only after the restoration of the balance of power through the achievement of atomic stalemate that it was possible and rational again for states to pursue neutrality as a foreign policy.[11] Morgenthau's discussion of neutrality mostly focused on the traditional European neutrals, whose preservation of neutrality would always depend on the interests of the great powers and whether in a given case the interest in this violation predominates 'over the fear of the risk that might result from such violation'.[12] Morgenthau's theory thus excludes neutrality as a strategic choice of states unless the ideal condition of balance of power is met.

For Michael Cox and Roger Mac Ginty this strategic choice was no longer available after the end of the Cold War because of the decline of the role of nation-states and growing integration dynamics, combined with the diffuse character of contemporary threats. The integrative dynamic of the new system was at odds with the 'exclusionist, single state-based approach' that neutrals favoured.[13] The new nature of threats and changes in the nature of conflict explained why neutrality was becoming obsolete. As states were increasingly pooling

[8] Hans J Morgenthau, "The Problem of Neutrality," *University of Kansas City Law Review* 7, no. 2 (1938): 126.
[9] Morgenthau, 478.
[10] Morgenthau, "The Problem of Neutrality."
[11] Hans Joachim Morgenthau, *Dilemmas of Politics* (United States: University of Chicago Press, 1958).
[12] Morgenthau, "The Problem of Neutrality," 115.
[13] Cox and Mac Ginty, "Farewell to a Beautiful Idea: The End of Neutrality in the Post-Cold War World," 130.

their sovereignty international organizations became more relevant actors to tackle the new challenges.[14]

We can move beyond seeing neutrality as merely a strategic choice and neutrals as security-seeking actors when looking at neutrality as an institution through the lens of the English School of International Relations. This not only allows for accommodating rationalist concerns related to neutrality but also its functions, which contribute to the shaping and maintenance of the balance of power and thus international society itself. Neutrality from the English School perspective can be approached as one of the historically and societally specific institutions underpinning international order. Putting more emphasis on the social aspects of the international order, Hedley Bull defined it as 'a pattern of activity that sustains the elementary or primary goals of the society of states, or international society', that being the security, respect of agreements, and guarantees of property rights.[15] Bull identified five primary institutions (balance of power, international law, great powers, war, and diplomacy) which underpin the international order and function to resolve problems of cooperation and coordination under the condition of anarchy. From this perspective, the function of neutrality would be not only the self-preservation of states but also preserving the order itself. In Bull's study neutrality was however not considered as a separate institution but rather seen as part of the institution of international law, a 'device limiting geographical spread of war'.[16] Its function thus could not be separated from the broader function of the international law. Nevertheless, what Bull has defined here was the legal form of neutrality, which is however not the only perspective on neutrality within this school of thought.

A different perspective on neutrality as an institution is provided by Martin Wight in his 1956 essay 'Idea of Neutrality', originally discussed in a BBC broadcast. While acknowledging the security-seeking function of neutrality, Wight also ascribed to neutrals a more active role, seeing them as capable of shaping and maintaining balance of the world. Historically, he argued, this was the case of American isolationism until 1941 that Morgenthau's theory did not account for, or the British non-intervention in the 19th century based on the maxims of economic expansion and focus on internal welfare. In a similar fashion, the neutrality of India, and to some extent Yugoslavia, during the Cold War could be according to Wight seen as 'active', in that these non-aligned states mediated between the Communist and Western powers, and were thus 'committed in some sense to the holding the balance of the

[14] Cox and Mac Ginty, "Farewell to a Beautiful Idea: The End of Neutrality in the Post-Cold War World."
[15] Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Columbia University Press, 1995), 8.
[16] Bull, *The Anarchical Society*.

world'.[17] Wight described the ethico-normative form of neutrality as the 'critical conscience' of neutrals, that sometimes provided an answer to the question of 'who shall police the policeman?', for which the international society could not provide an answer.[18] The role of neutrals as a critical conscience of the international society that Wight mentioned then became a subject of research among constructivist scholars, who discussed the role of neutrals in international norm construction.

The new type of constructivist scholarship which emerged began paying attention to the political form of neutrality, in analysing how neutrals contribute to shaping of the international order through their peace ideals. These analyses argued that neutral states were capable of projecting their domestic values and norms related to security and defence into the international realm.[19] As Christine Agius summarised it, 'by rejecting violence and promoting different forms of security in the international system, neutral states subverted the idea of the anarchic international system dictating that states use force to obtain security'.[20] These analyses emphasised the continued importance of neutrals in international affairs and their agency in international organisations.

Building upon the constructivist analyses emphasising the continuous importance of neutrals as norm entrepreneurs, the post-structuralist analysis of Agius redefined recurrent claims about the death of neutrality by emphasising the discursive nature of its disappearance and the politics behind it. Agius addressed the new status quo as post-neutrality, arguing that neutrality's transformation 'beyond recognition' was facilitated by the discourses of changing cooperation among states, that rendered neutrality irrelevant. The concept of post-neutrality she introduced expressed the smooth move away from neutrality among the scholars, policy circles, and officials that sought disassociation and distancing from it, as they perceived neutrality to be incapable of addressing the new types of security issues and obligations which states embrace, especially in terms of international and broader European cooperation.[21] By focusing on the discourses that did not allow for an active role of neutrals in international society, Agius explored the political form of neutrality from a different perspective.

[17] Martin Wight, "The Idea of Neutrality," in *Foreign Policy and Security Strategy*, by Martin Wight, ed. David Yost, 1st ed. (Oxford University Press Oxford, 2023), 86–90, https://doi.org/10.1093/oso/9780192867889.003.0005.
[18] Wight, 90.
[19] Efraim Karsh, "International Co-Operation and Neutrality," *Journal of Peace Research* 25, no. 1 (March 1, 1988): 57–67, https://doi.org/10.1177/002234338802500106; Laurent Goetschel, "Neutrality, a Really Dead Concept?," *Cooperation and Conflict* 34, no. 2 (June 1, 1999): 115–39, https://doi.org/10.1177/00108369921961807; Laurent Goetschel, "Neutrals as Brokers of Peacebuilding Ideas?," *Cooperation and Conflict* 46, no. 3 (September 2011): 312–33, https://doi.org/10.1177/0010836711416957; Christine Agius, *The Social Construction of Swedish Neutrality* (Oxford University Press, 2006).
[20] Christine Agius, "Transformed beyond Recognition? The Politics of Post-Neutrality," *Cooperation and Conflict* 46, no. 3 (September 1, 2011): 375, https://doi.org/10.1177/0010836711416960.
[21] Agius, "Transformed beyond Recognition?"

Christine Agius and Karen Devine then outlined a direction which could be helpful in addressing the problem of neutrality's continuous death and revival, drawing attention to the political nature of the concept itself. As they pointed out, neutrality is an essentially contested concept and they suggested tracing its 'meaning and purpose over centuries-long historical timelines and situated political, societal and security context'.[22] Although the authors in this article comprehensively list and trace various meanings and definitions of neutrality, they do not explore further the politics behind the changes in conceptualisations of neutrality they identified, and the co-dependency of these conceptualisations on the underlying societal and political structures. This text however provides a springboard for further investigation of this problem that I will do by conducting a conceptual history of neutrality that allows me to show how these four forms identified in the literature above, that is: the strategic, legal, ethico-normative, and political form, have much older pedigrees and were conceptualised into existence as a product of specific historical conditions of European societies to address different problems of cooperation and conflict. I will then further show how these forms emerge as a product of contestations over the meaning of the concept by different actors that has been taking place over centuries.

Towards a conceptual history

To undertake the research program outlined above, the English School of International Relations appears to be the most appropriately equipped to accommodate this research agenda, given its focus on the central concepts of International Relations, which stand for bigger issues of scientific inquiry in international relations, as Stefano Guzzini pointed out.[23] To treat neutrality as a fundamental institution through the lens of English School would mean approaching it, as one of the ''generic' structural elements of international societies' which are societally and historically specific and can transcend changes in the balance of power and differing constellations of interests, as well as the changing density and efficacy of the institutional practices.[24] At the same time the approach of English School allows for accommodating the rational conceptualizations of neutrality as a self-interest under the

[22] Christine Agius and Karen Devine, "'Neutrality: A Really Dead Concept?' A Reprise," *Cooperation and Conflict* 46, no. 3 (September 1, 2011): 265, https://doi.org/10.1177/0010836711416955.
[23] Stefano Guzzini, "The Ends of International Relations Theory: Stages of Reflexivity and Modes of Theorizing," *European Journal of International Relations* 19, no. 3 (September 2013): 521–41, https://doi.org/10.1177/1354066113494327.
[24] Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, Princeton Studies in International History and Politics (Princeton, N.J: Princeton University Press, 1999), 4.

conditions of anarchy. The English School thus has the capacity to encompass both, political and social elements of the international order.

There are, however, certain aspects of the scholarship that need to be problematised. As James Der Derian noted in his genealogical study of diplomacy, English School accounts contain a normative evaluation of the institutions that inscribes into them a particular 'nature' or 'essence' that then obscures the 'dynamic and dispersed forces behind the formation' of this institution.[25] Adopting conceptual history allows one to evade the problem of accounting for discontinuity and change in institutional practices as it shifts the mode of analysis in a way that allows to encompass the various struggles to define the concept of neutrality which led not only to its formation as institution, the changes in its practice, as well as its disappearance. The conceptual history thus gives us tools to account for its institutional birth, death, and resurrection, and allows us to make sense of the various forms of neutrality that were dominant in the international order throughout history.

My thesis will address the contested nature of the concept of neutrality and its relation to the international order by borrowing some of the methodological tools offered by the conceptual history of Reinhard Koselleck whose scholarship has recently gained prominence among International Relations scholars who seek to examine the origins and developments of the discipline, as well as the basic concepts the discipline operates with. [26] I will approach conceptual history in this thesis as 'a problem or a set of questions […] operating *within* social theory', which 'enters as soon as the problem of discontinuity and the co-dependence of social and semantic change are accepted', as suggested by Oliver Kessler.[27]

In my analysis, I will treat neutrality as a 'basic concept' [Grundbegriff] which is capable of encompassing a multiplicity of experiences while at the same time incorporating a 'variety of theoretical and practical references'. This sponge-like capacity distinguishes them from mere 'words' which point to facts and are used in particular contexts for particular purposes.[28] Concepts are thus, like Ernesto Laclau's empty signifiers, inherently contestable and their meaning is contingent on social and political constellations of the particular historical

[25] James Der Derian, *On Diplomacy: A Genealogy of Western Estrangement* (Oxford, OX, UK ; New York, NY, USA: B. Blackwell, 1987), 3.
[26] Halvard Leira, "The Emergence of Foreign Policy," *International Studies Quarterly* 63, no. 1 (March 1, 2019): 187–98, https://doi.org/10.1093/isq/sqy049; Oliver Kessler, "Conceptual History in International Relations. From Ideology to Social Theory?," in *The Routledge Handbook of Historical International Relations*, ed. Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira (London ; New York, N.Y: Routledge, Taylor & Francis Group, 2021); Felix Berenskoetter, *Concepts in World Politics* (London: Sage publications, 2016); Felix Berenskoetter, "Approaches to Concept Analysis," *Millennium: Journal of International Studies* 45, no. 2 (January 2017): 151–73, https://doi.org/10.1177/0305829816651934; Anatoly Reshetnikov, *Chasing Greatness: On Russia's Discursive Interaction with the West over the Past Millennium* (Ann Arbor, MI: University of Michigan Press, 2024), https://doi.org/10.3998/mpub.12333911.
[27] Kessler, 556.
[28] Kessler, "Conceptual History in International Relations. From Ideology to Social Theory?"

period.[29] In practical terms, adopting the approach of conceptual history means focusing on how the concept developed over time and space, to trace its 'life'. This can be traced by investigating four dynamics summarised by Felix Berenskoetter: the invention, reification, modification, and disappearance of the concept, which conform to different steps of analysis. That means analysing how the concept becomes established in a specific historical context, how a certain meaning becomes 'common sense', how the term acquires new meaning(s), and how it disappears from the vocabulary and stops being in use.[30]

The Koselleckian approach focuses on 'how conceptual change correlates with the discontinuity of political, social and economic structures, and in exploring how and why certain experiences and structural changes are grasped as, for instance, 'revolutions''.[31] This approach can therefore uncover not only something about the life of the concept but it can also tell us more about the 'configuration of the societies and historical periods in which concepts emerge or are transformed'.[32] In line with this, analysing the history of the concept of neutrality entails focusing on these four dynamics of its life while also paying attention to the co-constitutive relation between the concept and the structural changes underway in a given historical period. This allows us to see not only when the concept is reified and how it gains institutional expression (which do not necessarily coincide) but also the politics behind it, as the concept changes meanings over the centuries as a result of contestations by different actors.

Analysis inspired by Koselleckian conceptual history thus implies taking into consideration both, the diachronic and synchronic perspectives, which means focusing on the evolution of concepts from a macro-historical perspective, while also taking into account the complexity of how the concept is used within a spatially and temporally-defined field.[33] This entails looking into the continuities and discontinuities of meanings attached to the concept over the course of centuries, as well as analysing how the concepts operate within a semantic web and how they are linked to other concepts. This, as Berenskoetter pointed out is not an easy thing to do and there is no correct recipe for how to go about it, which leaves the politics of this up to the researcher and also hints at the limitations of type of research.[34]

Given the transdisciplinary life of the concept, I engage with various types of literature ranging from medicine, theology, political theory, history, law, and international relations theory, in which the concept is part of different semantic webs. Primary sources are used when

[29] Ernesto Laclau, *The Rhetorical Foundations of Society* (Verso, 2014).
[30] Felix Berenskoetter, *Concepts in World Politics* (London: Sage publications, 2016).
[31] Berenskoetter, 10.
[32] Berenskoetter, 10.
[33] Berenskoetter, *Concepts in World Politics*.
[34] Berenskoetter.

available to illustrate the conceptual change and are complemented by various secondary sources which discuss the history of the international order and practice of neutrality in specific periods.

Limitations

As already pointed out it is not always easy to find the balance between diachronic and synchronic modes of analysis. Given the difficulty of tracking conceptual changes from a long durée perspective across different disciplines, this research had to compromise in going into the complexity of local strategies and debates about re-definition of the concept and nuances that the deep readings of the texts allow for. Given the numerous articulations of neutrality by different actors it was not possible to include, so to say, 'everything' and neither was it the goal of this research. Instead, I wish to illustrate some of the repeating patters in the use of the concept of neutrality using some examples, which by no means exhaust the list of its use and articulation by various actors. These examples were selected to illustrate the continuous importance of the four forms identified in the literature and their transformation across different periods.

Another limitation this research faced was in terms of its disciplinary scope. Given the long transdisciplinary life of the concept I ventured into more 'distant' literatures on religion or medicine which, in the particular context, were relevant to the emergence of the concept of neutrality and how it has been understood in the discipline of IR today. On the other hand, I eschewed from analysing the use of the term neutrality or neutralization in the field of chemistry, or its more recent use in relation to internet, the 'net neutrality', or in relation to environmental policy discussing 'carbon neutrality'. I did so as these discussions did not appear to be immediately relevant to present discussions of the concept in relation to order in world politics, and therefore, they are not included in the analysis.

Scope of the analysis was also limited geographically as this is mostly a Europe-bound story, given the Eurocentric roots of the current international order, but also my own limitations in expertise and language competency. This is not to say that non-European societies did not develop institutions such as neutrality using different conceptual apparatus, or that they did not engage and contribute to the conceptualisation of neutrality that emerged in Europe. To a certain degree I engage with the literature on non-European perspectives of neutrality when discussing the Cold War and the importance of non-aligned movement. However, to more

meaningfully engage with this was beyond the scope of this thesis, as this would imply starting a whole new research agenda, to which this research might hopefully open doors to.

Chapter overview

I begin the analysis of the life of neutrality by discussing its origins and the invention of the concept which took place during the major crisis of authority in Latin Christendom as the three popes competed to be the head of the Church during the Great Western Schism. In chapter 1 I show how the emergence of the concept of neutrality was conditioned by the cross-contamination of vocabularies of medicine, theology, and politics, as the meaning of neutrality as an in-between state of the body was replaced by the idea of subtraction of obedience from the pope. The political form of neutrality which emerged as a result of this contestation over the authority in the Church contributed to establishment of politics as autonomous sphere of action, with its own rules and goals, separate from theology.

With fragmentation and gradual dissolution of the medieval Christian order, neutrality was redefined as a matter of individual choice of a prince with the rise of importance of the humanist and Renaissance cultural movement. Chapter 2 traces how certain ideas which emerged in relation to discussions of neutrality in the late medieval period were re-articulated and further reified as a strategic decision of the prince in the context of warfare taking place in Europe, while losing the connection to meanings associated with the health of a body and subtraction of obedience. This chapter traces discussions surrounding the strategic significance of neutrality and the modifications of this concept which came to include considerations of relative power and the advantage of time it granted. In response to the unrestrained claims of authority by European powers, the ethico-normative form of neutrality which defined neutral as a judge and mediator between princes who was capable of restoring the balance of power was also conceptualised into existence.

The geographical expansion of the European empire-states in the 17th and 18th centuries fostered new challenges in the uncharted domain of the sea and the ambiguous realm of international trade which led to an increased importance of law. Chapter 3 traces the conceptual changes of neutrality within the framework of the natural law of nations, in which the concept gradually lost its attachment to the prudential recommendations to the prince. I discuss how neutrality attained its spatial characteristics in the context of negotiating rules of trade on the sea and the contestation over neutrals' rights and duties to freely trade in the context of imperial expansion and the ensuing naval warfare. The clash between the different conceptualisations

of neutrality led to institutionalisation of its political form through the League of Armed Neutrality, establishing a short-lived concert of neutrals. Finally, this chapter also discusses modification of the ethical-legal form of neutrality in the natural law of nations and its institutionalisation to solve disputes in colonial trade.

Following the Napoleonic wars, disputes over the rights and duties of neutrals were settled as a shared understanding of order was established via the Concert of Europe. Chapter 4 traces how the legal conception of neutrality was modified and institutionalised in the 19th century European public law, which reflected the hierarchy established in the international society. While institutionalising the equal legal status between belligerents and neutrals with their respective rights and duties, it also rendered permanently neutral states as weak, semi-sovereign states who were dependent on the will of the great powers. This chapter then further illustrates how destabilisation of the concert of Vienna led to contestations of the concept of permanent neutrality/neutralization in relation to both, European and non-European societies. The ethico-normative form of neutrality was re-articulated as the European neutrals sought to gain an active function in the European order as restrainers of the great power politics. Outside of Europe the political form of neutrality was conceptualised by international lawyers to extend a modified version of the European order to non-European peoples and territories in the context of colonisation to 'internationalise' them, while the legal conception of neutrality was modified to manage competition over the spheres of influence between European colonial powers. On the other hand, neutralization was also articulated as a means of resisting colonial practices and shifting the standards of membership in the international society to include the non-European societies.

Following the First World War and the efforts to create a new order that would not rest on the balance of power and great power predominance, the institution of neutrality started to be portrayed as obstacle. Chapter 5 discusses interwar efforts to make neutrality disappear in the construction of a new post-war order based on a vision of a progress towards the universal organisation of the world. Neutrality was articulated by liberal internationalists as an archaic feature bound to disappear together with wars, only to be revived and contested soon after by different actors. The persistence of neutrality led to its re-definition so that its legal form was in line with the goals of the League of Nations. On the other hand, the actors who did not subscribe to this vision of the order, most notably the Soviet Union and Germany, rearticulated neutrality also in a new political form, seeking to re-define the international order through a different ideological lens, presenting neutrality as an alternative 'peace project'. The contestation of neutrality through different ideologies and the lack of a shared understanding

of the order led to the return of the strategic form of neutrality and its redefinition as a security policy choice of individual states conditioned by the balance of power, which continued to be relevant even during the Cold War.

After the Second World War a new set of interrelated issues was put on the agenda of the Cold War confrontation between the two superpowers: proliferation of nuclear weapons, extreme ideological competition, and the process of decolonisation, all of which were reflected in reconceptualizing of neutrality. Chapter 6 shows how neutrality was condemned to disappearance, this time by the defence intellectuals under the conditions of nuclear arms race. Despite this, neutrality continued to be present and modified to fit the ideological considerations of the superpowers, seen either as buffers to the expansion of Soviet influence, or as an extension of the Soviet policy of peaceful coexistence. As the debates about expansion of neutrality were ongoing, neutrality was redefined as a 'free space', not only from ideology but also from superpower competition and nuclear weapons. The passive status of free spaces then gave way to the active ethico-normative and political forms of neutrality, as neutrals and non-aligned countries claimed the role of mediators as the bridge between the East and West, contributing to the construction of nuclear non-proliferation norms. The political form articulated by the nonaligned states aimed at a bigger transformation of the international order and its democratisation, which would allow them to be recognised as equal members of international society, free from colonial interventions and free to pursue their own way of development. This chapter also identified a trend of growing importance of international organizations in policing the arrangements of neutralization, modifying the legal form, while increasingly claiming the ethico-normative role for themselves, on which I reflect in the conclusion.

1. No Obedience to the Pope(s). Neutral Bodies Enter Politics

This chapter discusses the emergence of the concept of neutrality in the late medieval period when the term neutrality was taken from the scholastic medical discussions about conditions of the body, referring to a state between health and sickness, and reappropriated as a political concept by secular authorities. As this chapter will show, there were important social processes at work in the often-overlooked medieval period that led to the use of the term *neutrum*/*neutralitas* for the first time in the political sense, to restore the 'unity' of the *Societas Christiania* through subtraction of obedience from the popes. Neutrality was reified as a political form that allowed for the separation of the authority of the secular rulers from the pope. I then discuss how the concept was further modified by different actors which allowed for its later re-articulation into a strategic form.

The prevalent accounts of neutrality in international relations literature regarding its medieval practice is that it was impossible or reprehensible to be neutral during this period. For instance, Devine and Agius pointed out that neutrality was not possible because of the religious and imperial unity which determined political relations and made neutrality morally reprehensible when just wars were fought.[35] While acknowledging that neutrality predates the state, Devine and Agius trace the origins of neutrality to antiquity, and Thucydides' Melian Dialogue, overlooking its medieval history.[36] And although some of the meanings associated with the concept of neutrality were indeed adopted from classical language, these accounts not only present an essentializing view of the medieval period but also reify a narrow interpretation of the origins of the concept that obscures important conceptual developments taking place during this period. As this chapter will show, the very term neutrality or *neutrum*/*neutralitas* in fact emerged during this period and the link between neutrality and classical concepts did not happen earlier than the 16th century. The association of neutrality with the language of antiquity that Robert Bauslaugh identified was possible in the first place only because of discursive work that took place during the late medieval period, and more specifically, during the so-called Great Western Schism.

The medieval period, as Julia Costa Lopez pointed out, has often been used as a category against which modernity was defined that served to reify myths of the emergence of the sovereign states. The ten centuries to which this category in IR often refers to however,

[35] Agius and Devine, "'Neutrality," 269; Agius, "Transformed beyond Recognition?"
[36] Agius and Devine, "'Neutrality."

were not a uniform block of universal sameness.[37] For the purposes of this research I engage with a specific period of the late medieval Europe, referred to sometimes as the '12th century renaissance' for the number of crucial social and political transformations in the in the organization of Latin Christendom that occurred from the mid-eleventh and throughout the thirteenth centuries.[38] These changes included massive demographic increases, densifying urban population and an increase of urban centres, and increasing importance attached to both, local and long-distance trade. Political and cultural changes were also part of the package and intellectual transformations included not only the establishment of universities, but included also new understandings of nature, reason, and community. This led to the development of 'new scholarly and teaching techniques in scholasticism, and expansion of interest in reading books beyond monastic centres, and a new relation to the classics'.[39]

Related to these transformations were also shifts in the way the Church claimed authority over and independence from secular structures, or as they referred to them, the 'temporal' powers. The medieval period was characterised by an embeddedness of discourse of politics within the discourse of religion, and all authority, whether temporal or spiritual, was sanctified through religion, as argued by Robert Jackson. In Jackson's words, Respublica Christiania was 'the way that religious and secular authorities justified their conduct. It was their mental map and their discourse of authority: the geopolitical-political framework in terms of which they thought of themselves and spoke of their world'.[40] Fundamental to this discourse was the Augustinian idea of the 'original sin' in which all humans were imagined to inherit the sin of Adam, and thus were understood to be sinners by nature. In line with this, achieving salvation was the ultimate purpose of Christian society. Divine order, which was to be emulated on earth through the institution of the Church, was constructed with the goal to offer the possibility of redemption for fallen men. In this papalist or hierocratic conception of society, Ecclesia was extended to create a comprehensive whole, incorporating not only religious but also political institutions.[41]

Thus, in medieval society all claims to authority and power were done through assertions of divine origins. Kings and emperors, while not being part of the clergy, had before the Gregorian reforms of 1075 undisputed religious functions, Berman noted. They presented

[37] Julia Costa Lopez, "International Relations in/and The Middle Ages," in *The Routledge Handbook of Historical International Relations*, ed. Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira (London ; New York, N.Y: Routledge, Taylor & Francis Group, 2021).
[38] Costa Lopez.
[39] Costa Lopez.
[40] Jackson, 34.
[41] Michael J. Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists*, Cambridge Studies in Medieval Life and Thought (Cambridge: Univ. Press, 2008).

themselves as the 'deputies of Christ', sacral figures leading their people. Especially the Holy Roman emperor, who claimed to be the 'supreme spiritual leader of Christendom, whom no man could judge, but who himself judged all men and would be responsible for all men at the Last Judgment'.[42] Following the 11th century papalist reforms, secular rulers started to be referred to by the pope as merely 'laymen'.[43] This discourse of authority was often, however, resisted as the papacy entered into conflict with the Roman empire and secular rulers, and later on by the reform movements of conciliarists and other reformers, as will be elaborated on later. Part of the resistance of the secular sphere to the government of the Church was also the establishment of 'increasingly sophisticated bureaucracies and taxation systems that made use of wealth and increasing monetization to provide revenue for rulers, secular, and ecclesiastic alike leading to an overall trend towards centralization of rule'.[44]

Epistemic communities of law

The authority of papacy was sustained and supported through law, more specifically, the knowledge of canon law, through which the expanding claims of papal authority were justified from the mid-twelfth century onwards. The science of law came to be regarded as a prestigious form of knowledge with the development of scholasticism. As Costa Lopez pointed out, legal categories and concepts formed 'a fundamental part of the language of politics at the time and provide[d] a crucial understanding of the nature of political relations and disputes'.[45] These legal categories were also important for establishing different forms of authority during this period.[46] The legal supremacy of the pope over Christians, as well as the clergy over the secular rulers, was proclaimed by the pope Gregory VII, who led the reform movement in a conflict with the Roman emperor over the right of investiture. The pope was vested with the authority to depose emperors and was proclaimed to be the only authority allowed to appoint the bishops, whose subordination would ultimately belong to him, rather than the secular rulers.[47] According to Bartelson, a gradual build-up of archives and registers enabled the rise of the

[42]. Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition* (Cambridge, Massachusetts and London, England: Harvard University Press, 1983), p.88
[43] Berman
[44] Costa Lopez, "International Relations in/and The Middle Ages."
[45] Julia Costa Lopez, "Political Authority in International Relations: Revisiting the Medieval Debate," *International Organization* 74, no. 2 (2020): 230, https://doi.org/10.1017/S0020818319000390.
[46] for more detailed account of different medieval categories of authority see Costa Lopez, "Political Authority in International Relations."
[47]. Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition* (Cambridge, Massachusetts and London, England: Harvard University Press, 1983).

superiority of the papacy in legal disputes arising from the Investiture Contest. 'The church had a past of its own, consisting of a continuity of texts linked together by a continuity of commentary and interpretation; its opponents possessed no such past. What was outside this body of texts, ranging as it did from the very words of God down to the tiniest legal protocol, was not admitted as knowledge'.[48] By the mid-thirteen century, the canonists claimed divine origin for the pope alone, while the emperor was thought to receive his divine powers only indirectly, via the intermediary of pope.[49] The succeeding popes, trained in the discipline of law, continuously refined and broadened the legal basis for applying the papacy's spiritual and temporal claims of authority. Emphasising the importance of the geopolitical context, Skinner pointed out that these hierocratic ideas developed through canon law in the context of the expansion of the Papacy's temporal control over the majority of the area in central Italy, extending considerable influence over almost all major Italian cities. He argued that to legitimate the expansionist policies of the Papacy, Gratian's *Decretum* was developed in the 1140s as an ideational framework by condensing the accumulated Papal Decrees into a comprehensive system, thus creating a code of canon law.[50]

The status and legal power of the pope relied on a distinction between the pope as a person and the pope as an office, as already by Leo I, building upon the Roman tradition of law as Ullman points out. The office of the pope established the papal jurisdictional power which was seen as completely independent from the individual in whom the power was vested and seen as further transmittable, and therefore, every pope was considered to be a direct successor of Saint Peter who was given his power and office by Christ.[51] Thus, every successor pope, as an heir of Petrine powers, possessed the so-called plenitude of power (*plenitude potestatis*). This category of authority denoted 'the hierarchical relation between the whole and the parts, or between the geographically unlimited authority of the pope and the geographically circumspect one of the bishops'… It was a language that emphasised the differences and exceptionality of supreme power vis-à-vis others'.[52] Furthermore, as Ullman argued, the distinction between the office and the person also conveniently relegated considerations regarding the person, character, or bearing of the pope, to the background. The office and the

[48]. Jens Bartelson, *A Genealogy of Sovereignty*, 1st ed. (Cambridge University Press, 1995), p.93, https://doi.org/10.1017/CBO9780511586385.
[49]. Walter Ullmann, *Medieval Papalism* (London: Routledge, 2012).
[50]. Quentin Skinner, *The Foundations of Modern Political Thought. Vol 1.: The Renaissance*, 20th ed., vol. 1 (Cambridge: Cambridge Univ. Press, 2014).
[51]. Walter Ullmann, *A History of Political Thought: The Middle Ages*, Reprinted with revisions (Harmondsworth: Penguin Books, 1970).
[52] Costa Lopez, "Political Authority in International Relations," 235.

laws and decrees originating from the office were instead at the forefront.[53]

While Gratian's system of law and canonists in general adopted some of the most important Roman ideas, such as the pope's position above the law or the papal office, incorporating them within the Christian doctrines, nevertheless, Roman law was seen to mostly have an auxiliary function, being inferior to canon law, as Ullmann's study of cannon law shows.[54] It was also in the service of the emperors that the Roman law was deployed to counter the claims of canonists in support of papal supremacy.[55] Many of the conflicts between papacy and kings and emperor would take place on the ground of law and, just as the popes employed canon law, the secular leaders also employed lawyers in their service. To contest the papacy's discourse of authority, it was not just the Roman law that was invoked but also identification with the Roman empire as a whole by creating a continuity with this political entity.[56]

As the most significant supporter of canonist theory of papal supremacy has been regarded Pope Innocent III who designated the pope not only as a Vicar of Christ but also as a Vicar of God. His degree *Ad Apostolicae Sedis* was the first systematic account of the idea that Christian society forms a unified body whose ultimate head is the pope. These doctrines were further reiterated in the fourteenth century by Boniface VIII in his well-known 1302 bull *Unam Sanctam*, which designated the superiority of the spiritual sword over the temporal sword for claims in Christian society, and thus subordinated the latter.[57] The subjection of the secular kings' coercive jurisdiction to each succeeding pope was necessary for salvation according to Boniface. The ultimate power of both, the spiritual and temporal sword, ought to be held by the Vicar of Christ – the pope - since 'the spiritual power possesses the authority to institute earthly power and to stand in judgment over it, if it should fail to act properly'.[58] As Ullmann argues the law of the pope demanded obedience by everyone, as it was understood to be territorially unrestricted in terms of its applicability and validity, unlike imperial laws. Thus, according to the canonists, the dominion and jurisdiction of the pope extended over the entirety of the world regardless of the religion, while on the other hand, the emperor's power was coextensive with and limited to the world of Christians.[59] The creation of a science of law was motivated by papal aspirations to have a basis for its policies, however, at the same time, the emperor and his supporters would source for ancient texts that would support the empire's

53. Ullmann, *A History of Political Thought*.
54. Ullmann, *A History of Political Thought*.
55. Walter Ullmann, *Medieval Papalism* (London: Routledge, 2012).
56. Walter Ullmann, *Medieval Papalism* (London: Routledge, 2012).
57. Skinner, *The Foundations of Modern Political Thought. Vol 1.: The Renaissance*.
58. Skinner, 1:15.
59. Walter Ullmann, *Medieval Papalism* (London: Routledge, 2012).

resistance to papal supremacy.[60]

Within this understanding of the order, the supreme criterion for government was the knowledge of Christian faith. Government and directions of *sacerdotium* were, according to this logic, unavoidable as they were the only ones qualified to define the meaning of Christianity and Christian way of living.[61] This was reflected in the dichotomy of 'mind and matter' which represented the relationship between the pope and the emperor or other 'temporal' rulers, privileging the former over the latter. The temporal aim of life, a 'natural felicitude' was subordinated to the ultimate spiritual aim of a 'supernatural beatitude', and the existence of the first was defined as being for the sake of the latter.[62] Popes were understood to be the connection between terrestrial and celestial realms, and they were tasked with reproducing the harmony of the celestial sphere in the earthly Christian society.[63] In practice this meant that Pope, regarded as the 'Prince of peace', had the special responsibility to preserve peace among Christian rulers, by arbitrating disputes among the monarchs. This would guarantee stability within the Christian realm which was necessary to conduct crusading activities in the East.[64] The pope would thus maintain the unity of the body by resolving disputes and ensuring cooperation among the secular rulers but also maintaining it by unifying them against the external other – the infidels.

The international as the corporeal

The understanding of order institutionalised through various practices by the papacy, canonists, and clergy represented the organization of society as having a corporate organic nature, which emphasised its indivisibility with a membership based on the Christian religion. As Bartelson aptly put it: 'at its most abstract level, high medieval Christian society was a universal society; it was universal insofar as the Church - the Ecclesia - understood itself as an indivisible unity covering every aspect of man's political and social being, and the preservation of this essential wholeness was the prime purpose of earthly authority'.[65] This interpretation of medieval order

[60]. Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition* (Cambridge, Massachusetts and London, England: Harvard University Press, 1983).
[61] Skinner, *The Foundations of Modern Political Thought. Vol 1.: The Renaissance*.
[62] Walter Ullmann, *Medieval Papalism* (London: Routledge, 2012).
[63] Karsten Plöger, *England and the Avignon Popes: The Practice of Diplomacy in Late Medieval Europe* (London: Legenda, 2005).
[64] Plöger.
[65] Jens Bartelson, *A Genealogy of Sovereignty*, 1st ed. (Cambridge University Press, 1995), 91.

was based on seeing the multitude/multiplicity of individuals embodied as a mystical body of Christ, the head of which was represented by the Pope. Although the term 'international' as such did not yet exist during this period, being an 18th century creation, the multiplicity of polities was expressed in different terms, often through anthropomorphic metaphors such as the body. In other words, the body was the site of politics through which relations between the Church, the Roman Empire, the European kingdoms, and other actors were negotiated and organised.

The Platonic cosmology informing this discourse of order, and its associated idea of totality and indivisibility, implied also that it was unthinkable to make distinctions between religion, politics, or ethics. As Ullmann put it, Christianity 'claimed to seize the whole of man and his activities could not be atomized into various categories'.[66] Thus, the hierocratic conception of society was not understood merely in terms of social and political institutions in need of a government but rather as 'a conscious expression of way of life, a pattern of human existence', with the supreme interpreter of the 'Christian way of life' being the pope.[67] Unity and oneness were some of the foundational concepts constitutive of the discourse of order promoted by the Church. The idea of unity can be traced to Augustine's City of God, where unity was associated with the function of preventing and healing discord among men. It was seen as a means of reconciling the differences among humans. 'Human nature', he stated, 'has nothing more appropriate, either for the prevention of discord, or for the healing of it, where it exists, than the remembrance of that first parent of us all, whom God was pleased to create alone, that all men might be derived from one, and that they might thus be admonished to preserve unity among their whole multitude'.[68] The plurality of individuals and their conflicts thus could be reconciled through the unity which was inherent to human nature as all men were derived from one, to the image of the God. The idea of unity was related closely to the idea of order and the post-Augustinian theorists considered unity and order as 'an expression of the divine plan'.[69]

This idea of everything being derived from one could also be found in Thomas Aquinas' understanding of government which incorporated Aristotelian ideas of Ethics and Politics. Aquinas tried to reconcile reason with Christian doctrines in his work *On Kingship* and according to him, the reason of one man governed the multitude of men, constituting the office of the king. The king's position in the kingdom, Aquinas argued, was the same as that of the

[66] Walter Ullmann, *Law and Politics in Middle Ages* (Cambridge: Cambridge University Press, 1976), 39.
[67] Wilks, *The Problem of Sovereignty in the Later Middle Ages*.
[68] Saint Augustine, *City of God*, trans. Marcus Dods, vol. Book XII, Chapter 27 (Logos Virtual Library, n.d.).
[69] Wilks, *The Problem of Sovereignty in the Later Middle Ages*.

soul in the body, and God in the world. Aquinas claimed that preserving the unity of a society was a key concern of the ruler, an obligation which was not up for a deliberation. While the unity of a man was established by nature, the unity of multitude or society ought to be 'procured through the efforts of the ruler'.[70] Welfare and safety of the society was, according to him, dependent on the conservation of the unity of multitude, which is called peace. The ideal government, as in nature, Aquinas argued, was the government of one, since dissensions follow if the cities or provinces are ruled by many.[71] If the end of multitude was a corporeal good, such as health and life, a physician would be in charge of governing the multitude, rather than a king. The ultimate end, which was the enjoyment of the God, however, could not be achieved by a human power, therefore, the divine government was tasked with leading the individual and multitude. This type of government belonged to a man who was not merely a human but also a god – Jesus Christ. The ministry of this kingdom was given to priests, not earthly kings, and first of all, to the Vicar of Christ, the Roman pontiff.[72] This sort of logic thus also gives prominence to the pope as a governor, to whom all the kings of Christian people should be subjected.

The idea of unity was foundational to the hierocratic discourse often used by canonists and pro-papalist writers to legitimise what has sometimes been called papal absolutism. The governing structure of medieval Christian society was to reproduce the idea of the heavenly order of one ruler in heaven, thus multiformity was considered alien.[73] As the papal bull *Unam Sanctam*, representing the papal claims of authority over the secular leaders stated 'of the one and only Church there is one body and one head, not two heads like a monster'.[74] Expressing this idea of unity and order was done through the metaphor of body, as the above-quote illustrates. The expression 'mystical body,' Ernst Kantorowicz pointed out, 'which originally had a liturgical or sacramental meaning, took on a connotation of sociological content'.[75]

The unity of the body was then expressed in two different ways according to Wilks. The horizontal understanding, which pertained to the unity of individuals through their belief who together constitute the body of Christ in the Pauline doctrine: 'so we being many are one body in Christ and everyone members of one of another'. The second understanding was the

[70] Thomas Aquinas, *On Kingship : To the King of Cyprus*, trans. Gerald Phelan (Toronto: Pontifical Institute of Mediaeval studies, 1982), 40.
[71] Aquinas, *On Kingship*.
[72] Aquinas.
[73]. Walter Ullmann, *Medieval Papalism* (London: Routledge, 2012).
[74] Pope Boniface VIII, "THE BULL UNAM SANCTAM, 1302," ed. Paul Halsall, accessed January 10, 2024, https://sourcebooks.fordham.edu/source/b8-unam.asp.
[75] Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*, First Princeton classics edition, Princeton Classics (Princeton: Princeton University Press, 2016), 196.

vertical one, which referred to the unity of the body with the head, meaning unconditional obedience of the pope as a source of faith. In line with this, peace and stability of the Christian society would be established through unity.[76] The authority and power of secular rulers could in this conception of 'international' not be understood outside of the authority of papacy and it was later subject of controversy.

Anthropomorphic metaphors were also famously used in John of Salisbury's *Policraticus,* written around 1159, to describe social and political institutions. In John's text organicist metaphors were for the first time applied also to the secular sphere. As Berman pointed out, John considered a body to be every territorial polity which was headed by a ruler. 'The prince is compared with the head, the senate with the heart, the judges and provincial rulers with the eyes, ears, and tongue, the soldiers with the hands, the tillers of the soil with the feet'.[77] According to Kantorowicz the chapters well-known for depictions of the state (res publica) as a body were a feature of broader changes taking place in the history of western thought, as the ideas of organic and corporeal structures of society re-entered the political thinking.[78]

The body was also the site on which Papal authority was contested and the idea of an all-encompassing unity of a body was contested in works that sought to re-articulate the relation between the papacy and secular rulers and to disrupt the hierarchy. This took place for instance during the dispute of the French king Philip the Fair with Pope Boniface, as the Dominican theologian John of Paris articulated it in defence of his king in *On royal and papal power* in 1302. For John the concept of unity was limited to the spiritual realm, while the temporal realm was characterised by a plurality of rule. The subordination to one supreme authority was by divine ordinance and thus more frequently existed among ecclesiastical ministers rather than secular princes. From that he concluded that 'it is not the case that the faithful laity are by divine law subservient to one supreme monarch in temporal matters. Rather, they live civilly and in community according to the prompting of a natural inclination which is from God'.[79] This natural inclination then prompted laity to choose various types of rulers who 'oversee the well-being of their communities to correspond with the diversity of these communities'. [80] He argued that there was a diversity in regard to the bodies among men, although not their souls

[76]. Wilks, *The Problem of Sovereignty in the Later Middle Ages*.
[77] Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition* (Cambridge, Massachusetts and London, England: Harvard University Press, 1983), 286.
[78] Kantorowicz, *The King's Two Bodies*.
[79] John of Paris, *On Royal and Papal Power*, trans. Arthur P. Monahan, Records of Civilization : Sources and Studies, no. 90 (New York: Columbia University Press, 1974), 14.
[80] John of Paris, 14.

which were 'constituted of essentially the same type of the unity of the human species'. [81] The body was thus seen to have a 'physical' quality which by nature was different and the mystical quality was limited to the soul which allowed for the claim that humans were united through one soul but had different bodies.

The diversity of bodies was then linked to a natural human inclination to choose different types of rulers. While acknowledging the necessity of one head for the unity of the faithful and judgment of controversies of the faith, John argued that 'this purpose does not require that faithful be united in any common state'.[82] It was possible to imagine 'different ways of living and different kinds of state conforming to differences in climate, language, and the conditions of men, with what is suitable for one nation not for another'.[83] These ideas of differences of bodies leading to different forms of government can also be found later still in Bodin's *Six Books of Commonwealth*. Articulating the temporal realm in terms of a diversity of bodies allowed him to dispute the papal claims of necessity of the rule of one man over, both the spiritual and temporal realms, as it laid down neither in divine nor natural law.[84] These anthropomorphic metaphors were constitutive of the medieval 'international', insofar as they were used to reify certain idea of order that privileged the position of the Pope and Church but also to contest it.

Disorder in Societas Christiania

The issue of unity vs. multiplicity of body and its parts came into the spotlight during the Great Western Schism when neutrality was for the first time articulated as a political solution. The Great Western Schism that occurred towards the end of the 14th century meant a radical disruption of this imagined unity as two, and at some point, three popes were competing for decade over the authority in Christian realm, with its beginning typically traced back to the disputed papal election of 1378, following the move of papacy from Avignon back to Rome. Fundamental concepts informing the understanding of the medieval order were put into question in the discursive struggles taking place during this period. At the heart of the dispute was a controversial election, when for the first time, within the span of five months, two distinct popes were elected by an identical college of cardinals, which sparked debates about who was

[81] John of Paris, 14.
[82] John of Paris, 15.
[83] John of Paris, 15.
[84] John of Paris, *On Royal and Papal Power*.

the 'true pope'. The authority of the pope Clement VII over Christian subjects was challenged by the anti-pope Urban VI elected a few months later. This division and conflicts over the authority between the Roman and Avignon popes continued well into the 15th century as new popes and anti-popes continued to be elected on both sides, despite the promises of both popes to end the schism.

With the schism continuing for more than twenty years, the stability and harmony at the heart of the Christian way of life at the turn of the century was seen to be fundamentally disrupted. The 1398 letter of a scriptor De Clamanges in the papal chancellery, addressed to cardinal Pierre d'Ailly is indicative of the perceived chaos and instability. De Clamanges wrote:

> The Church was collapsing, the apostolic see was collapsing, the authority of the sovereign pontiff was collapsing (ruit…ruit…ruit). Obedience, fear, order, religion were no more (perit obediencia…, perit metus…, perit ordo…, perit sacra religio…). The ecclesiastical orders were overturned, worldly estates were confounded, everything was topsy-turvy.[85]

This was a situation of uncertainty and confusion about the order of relations. Unity became one of the nodal points around which the discussions of legitimate authority were led during the Schism. With the continuous situation of multiple popes claiming authority of the head of the church, the concept of unity was put into question as the established papalist narrative no longer reflected lived experience. As previously discussed, within the papalist conception of order, one body required one head only, a head which was to be obeyed by everyone universally, and in this case, it was unclear who the 'true pope' and the head of the church was. Furthermore, the body itself became divided regarding who to obey, thus the narrative of the unity of the body with the head no longer reflected the state of the affairs. The Schism represented a rupture in the ecclesiastical narrative claiming a universalist cosmology.

In the ensuing discussions, various solutions to the schism were articulated with the aim to restore the unity of Christendom. As the schism continued throughout the following years, at the turn of the century both popes came to be regarded as incapable of restoring the unity and maintain the harmony in the Christian society. In fact, they came to be seen as harmful to the Church itself and subversive of the established order. Popes started to be represented as heretics - a category which was typically deployed against the those seen as subversive of the unity of *societas Christiania* and also to reify a particular vison of the society which legitimised

[85] Bernard Guenée and Bernard Guenee, *Between Church and State: The Lives of Four French Prelates in the Late Middle Ages* (University of Chicago Press, 1991), 191.

the pope's authority. In the discursive struggles taking place in this period, canonists and theologians from key universities designated popes as heretical and schismatic disturbers of peace. Even the popes themselves represented each other as schismatic. As Walter Ullmann described the situation, 'excommunication and counter-excommunication by the rival popes, the tirades delivered by the one against the other, and the inevitable political intrigues made it almost impossible to entertain much hope of any reconciliation or rapprochement'.[86]

This use and abuse of these categories further blurred the lines between the inside and outside of the ecclesiastic order. The schism lasted for almost forty years and finally ended with the Council of Constance which in 1417 elected a single pope Martin V and institutionalization of the conciliarist solution. When discussing the schism, Quentin Skinner argued that it soon became quite obvious that ending the schism was to be done through the removal of both popes and summoning of the General Council to sit in judgment on the matter of who was to be the head of the Church. Therefore, 'it came about' according to Skinner, that the conciliarist doctrine was accepted by the cardinals.[87] It however was not immediately obvious that the General Council would be the solution to the schism. It was not until 1409 that the first council took place to end the schism. In fact, prior to the conciliar solution, there were various efforts to find mechanisms to end the schism. Furthermore, the schism as a political construction was also used to justify policies of military expansion, as Howard Kaminsky pointed out, and its continuation and end were driven by particular interests of not only the popes but also of the kingdoms. For instance, the intervention by French leaders in Italy was financially and ideologically supported by Avignon papacy as they were presented as '*via facti*' – a means of ending the Schism by force, rather than being mere conquests and expeditions.[88]

In the conceptual web holding together the assumptions of the papalist order, unity was closed tied up to the concept of obedience which was integral to the pope's authority and jurisdiction. The organicist conception of a society took obedience of other parts of the body, meaning also the secular rulers, as something natural and given. The schism manifested in a division of clergy and secular rulers declaring obedience to different popes but also in a division among the rulers about who should be recognised as the true pope and the true head of the church. The issue of obedience which was taken for granted in the papalist conceptualization of order taken as a necessary condition for salvation thus became politicised, as it was no longer

[86] Walter Ullmann, *The Origins of the Great Schism: A Study in Fourteenth-Century Ecclesiastical History* (Archon Books, 1967), 90.
[87]. Quentin Skinner, *The Foundations of Modern Political Thought. Vol 2.: The Age of Reformation*, 19th printing, The Foundations of Modern Political Thought, Quentin Skinner ; Vol. 2 (Cambridge: Cambridge Univ. Press, 2013).
[88]. Howard Kaminsky, "The Politics of France's Subtraction of Obedience from Pope Benedict XIII, 27 July, 1398," *Proceedings of the American Philosophical Society* 115, no. 5 (October 15, 1971): 81.

clear who the 'head' of the Christian body was. At the beginning of the schism the allegiances of the monarchs were split between the Avignon pope Clement VII, and Urban VI, who resided in Rome. Clement VII was supported by the majority of the cardinals and France, John of Naples, Scotland, Savoy, Castile, Aragon, Navarre and Lorraine. Urban on the other hand, appointed a number of new cardinals and received support from England, Flanders, Portugal, the German territories, Hungary and Scandinavia.[89] The schism thus engendered positions of 'rival obediences' cantered around the two popes, not only among the clergy but also among the secular rulers.

The division of territories based on distinct obediences was in reality less clear-cut and not only on the level of kingdoms and cardinals, as Blumenfeld-Kosinski points out. There were dioceses where competing bishops were in charge, such as cities of Liege, Constance, Wroclaw, or Basel. Bishops would pass sentences of excommunication onto each other, thus weakening the trust of people towards the ecclesiastical leaders.[90] It was unclear who to believe and created an 'indescribable mental confusion' as Ullmann points out. 'The spiritual salvation of the common people was determined by the attitude of their rulers and superiors, guided as these were by motives far enough removed from the spiritual, religious or moral'.[91]

Cutting across the conflict over the head of the Church was also the Hundred Years War fought between France and England and the alliances among the kingdoms also affected whether one would proclaim obedience towards the French or Roman pope. The Hundred Years war also further accelerated the processes of re-defining medieval polities as national monarchies, and the emergence of a new space where multiplicity was rearticulated in a way that allowed for claims of sovereignty outside of the authority of papacy. This situation laid the groundwork to question papal obedience, with which the concept of neutrality came to be linked, being presented as the way of restoring unity of the Church. It was in France where the discourse of a national monarchy was the most prominent and where neutrality emerged as a solution to the Schism.

Neutral bodies

89. Renate Blumenfeld-Kosinski, *Poets, Saints, and Visionaries of the Great Schism, 1378-1417* (University Park, PA: Pennsylvania State University Press, 2006).
90. Blumenfeld-Kosinski.
91. Walter Ullman cited in Blumenfeld-Kosinski, 7.

Anthropomorphic metaphors were an important part of the vocabulary defining social and political relations, as earlier discussed in the context of the order defined as a mystical body of Christ. The use of the term neutrality, before making its way into debates around the schism, was at first contained to medical discussions of the 12th century. The debates on neutrality were at first contained within the context of the treatment of bodies as a reaction to Galen's works. Two concepts were discussed among physicians - *neutrum*, which was a Latin translation from the Greek *oudetéron* used by Galen, and *neutralitas*, which started to be used after being introduced in an anonymous commentary on Galen's *Tegni* around 1125-30. These discussions were taking place in a transitional period for Western medicine, as its disciplinary boundaries as a separate academic discipline were yet to be determined. Prior to that period, medicine was regarded only as a 'second philosophy' or a 'mechanical art', Shogimen and Nederman noted.[92] Towards the end of the twelfth century however, a distinction started to be introduced in medical texts differentiating theoretical and practical medicine, as medical science started to be established under the influence of scholasticism, with vast amounts of treatises and canons being produced. Emphasis and dignity, according to John Riddle, was assigned to theoretical medicine and Latin translations of Islamic writers such as Avicenna, Haly Abbas and others, putting theoretical medicine to a much higher position than the Arabic originals. Some writers went as far as to state that the medicinal effects of drugs cannot be known or understood through experimenting.[93] According to Ricardus Anglicus, practical medicine was 'greatly inferior and more undignified'.[94]

Despite these developments, the distinction between medicine as a science on one hand and as a mechanical art or magic remained blurry as the status of medicine as a higher learning in the late 14th and early 15th century was discussed in Italy, and its position remained inferior to that of the science of law.[95] However, medicine was a mandatory part of the university curriculum, with students studying at the Faculty of Arts being taught Aristotelian views on medicine before starting with their respective specialist trainings in law, theology or medicine.[96] This is important to consider in order to account for how neutrality made its way from medical discussions to political ones.

[92]. Takashi Shogimen and Cary J. Nederman, "The Best Medicine? Medical Education, Practice, and Metaphor in John of Salisbury's Policraticus and Metalogicon," *Viator* 42, no. 1 (January 2011): 55–73, https://doi.org/10.1484/J.VIATOR.1.102004.
[93]. John M. Riddle, "Theory and Practice in Medieval Medicine," *Viator* 5 (January 1974): 157–84, https://doi.org/10.1484/J.VIATOR.2.301620.
[94] John M. Riddle, "Theory and Practice in Medieval Medicine," *Viator* 5 (January 1974): 176, https://doi.org/10.1484/J.VIATOR.2.301620.
[95] Riddle, "Theory and Practice in Medieval Medicine."
[96] Riddle.

The term *neutrum*, which referred to 'an intermediate state between health and diseases' entered into discussions among physicians after Galen's translations of Tegni from Greek appeared in the curriculums of Italian hotspots for medical learning around 1150, as the study of this conceptual innovation of Maaike van der Lugt shows. The greek *oudetéron* was translated into Latin as *neutrum* and could be understood in three distinct ways 1.) as being part of either of the opposites (health and sickness) 2.) being part of neither of them; 3.) first being part of one and then participating in the other. Early commentators, according to van der Lugt were responsible for the creation of a new term *neutralitas* in addition to Galen's *neutrum*. The term *neutralitas* introduced through the anonymous commentary was described as a 'state of weakness, as in convalescents who are still weak, but no longer ill, or in old people who do not, however, suffer from any specific disease'.[97] Introducing *neutralitas* as a noun, in addition to adjective forms of *neutrum* and *neutralis* was meant to reify the meaning of the concept as a third disposition alongside *sanitas* (health) and *egritudo* (sickness).[98]

The discussion of the concept intensified in the second half of the 13th century as more functionalist understandings of health were introduced through translations of Aristotle's works with debates revolving around the question as to whether neutrum/neutralitas represents a distinct state of the body. Physicians adhering to the Averroist Aristotelian ideas saw health in functionalist terms, which led most of them to reject the possibility of neutrum/neutralitas as a third state of a body. Disease was seen as a functional damage to a part, therefore, there could not exist a middle ground between damage and non-damage.[99] While in Galen's terms, van der Lugt noted, health was more of an ideal; a normative concept referring to a balance of complexions (*temperamentis*), which differed from one individual to another. 'The perfect complexion (*eukrasia*), and thus perfect and ideal health, is not of this world. Perfect balance can, at most, exist during a fleeting moment. However, the complexion can be called balanced as long as it allows the body to function properly'.[100] The role of physician was therefore to find and maintain balance in bodies.

Parallel to scholastic discussions in the emerging field of medicine, the term *neutralitas* appeared in John of Salisbury's earlier discussed *Policraticus*. In the second book of *Policraticus*, John brings up the term *neutralitas* in his elaboration on the role of physicians

[97]. Maaike van der Lugt, "Neither Ill nor Healthy: The Intermediate State between Health and Disease in Medieval Medicine," *Quaderni Storici*, no. 136 (2011), 14.
[98] Maaike van der Lugt, "Neither Ill nor Healthy: The Intermediate State between Health and Disease in Medieval Medicine," *Quaderni Storici*, no. 136 (2011): 13–46.
[99] van der Lugt.
[100] van der Lugt, 8.

and refers to a distinct state between health and sickness. Like his contemporaries, John made the distinction between theoretical and practical physicians. The role of physicians, according to him, was to be 'guardians of health, sickness, and the neutral state. They confer […] health and maintain it; they give advice that obtains for you the neutral state; they foresee illness and instruct as to the cause; they indicate its beginning, and growth, crisis, and decline'.[101] While the metaphors from medicine were used extensively in his other books that deal with political issues, a neutral state was not brought up in that context. The use and meaning of neutrality remained confined to non-political affairs and only appeared later at the turn of the 14th century in the context of schism. It is however plausible to assume that the term neutrality was taken from this widely-read text to also be applied in a political sense, as John does in the body metaphors.

The possibility of this new meaning was facilitated by mutual contamination of the vocabularies of medicine, theology, law, and politics, as medicine was not yet regarded as a separate discipline. The connection between Christianity and medical practice was long-standing and had biblical origins. In earlier periods, it was clergy who often performed the function of physicians. There were bishops and clerics practicing medicine outside of monastery, frequently while being in service of kings and nobles until it was restricted and forbidden by the Church in the course of the 12th and 13th centuries as series of edicts and rulings were passed at councils.[102] The concepts from medical field were often used as metaphors to describe what would be today regarded as social and political phenomena.

As discussed, the order itself was often represented in terms of the mystical body of Christ and anthropomorphic metaphors were also used in service of those opposing the Papacy. It is thus not surprising to see that disturbances of order were also represented as a form of different afflictions of the body. This was the case in Marsiglio of Padua's work when speaking of how papal interference in Italy threatened the human happiness.[103] The civil discord or 'intranquility' took the form of a 'separation of citizens and finally the degeneration of the Italian cities of polities' which he saw as 'pernicious pestilence' that could further 'infect other kingdoms of faithful Christians throughout the world with the same corrupt root of vice'.[104] Papal interference into the temporal affairs of the body political was disturbing unity and tranquillity, and the disorder could potentially spread to other parts of Christendom. Similarly,

[101] John of Salisbury, *Policraticus*, trans. Joseph B. Pike (New Yorks: University Of Minnesota Press, n.d.), 154.
[102] Plinio Prioreschi, *A History of Medicine*, 2nd ed, vol. 5 (Omaha: Horatius press, 1996).
[103] Cary J. Nederman, "Nature, Justice, and Duty in the Defensor Pacis: Marsiglio of Padua's Ciceronian Impulse," *Political Theory* 18, no. 4 (November 1990): 617.
[104] Marsiglio of Padua cited in Nederman, 617.

the schism was also often represented as a form of sickness, a pestilence, or a plague. As Blumenfeld-Kosinski noted, the metaphor of plague in the sense of an epidemic as well as an open wound it caused, was often employed when speaking of schism.[105] The Schism was thus something that needed to be healed so that the balance of the body could be restored.

Questioning obedience

The transformation of the meaning of neutrality from an exclusively medical term to a political concept was initiated by the French scholastics who intended to put an end to the Schism at the turn of the century. This was conditioned by the prior discursive work done by authors who sought to dislocate the concept of obedience central to the vision of the order as a mystical body of Christ.

All the major debates about ending the schism took place at the University of Paris, which was considered to be the 'the nursery of learning in general, and of theology in particular'.[106] All the important questions of the fourteenth and fifteenth centuries, including the matters of politics, in some way involved an intervention of the university. Paris was regarded as 'the highest authority in matters of Christian doctrine, and the guarantee of orthodoxy'.[107] The university enjoyed special protection from the king, having an advisory function in state affairs and also being closely affiliated with the royal court.[108] Initially, scholars of canon law came up with three ways as to how to put an end to the schism; besides the already mentioned *via facti*, or armed conflict, there were also *via compromissi* or the arbitration, *via cessionis* - the abdication of both popes, and the *via concilii*, meaning summoning of a General Council.[109] In a letter from 6 June 1394, the University of Paris stated that a pope who rejects one of the three ways of ending the Schism was 'a schismatic and heretic who merited death', and at the First Paris Council in 1395, the *via cessionis* was adopted as the official program of France.[110]

Towards the end of the century, as none of the above solutions proved to be effective, the idea of obedience began to be questioned in France and its partial withdrawal was accepted at the Third Paris Council as a solution to the Schism. In the context of these debates at the

[105] Blumenfeld-Kosinski, *Poets, Saints, and Visionaries of the Great Schism, 1378-1417*.
[106] Guillaume H. M. Posthumus Meyjes, *Jean Gerson, Apostle of Unity: His Church Politics and Ecclesiology*, Studies in the History of Christian Thought 94 (Leiden: Brill, 1999).
[107] Guillaume H. M. Posthumus Meyjes, *Jean Gerson, Apostle of Unity: His Church Politics and Ecclesiology*, Studies in the History of Christian Thought 94 (Leiden: Brill, 1999).
[108] Posthumus Meyjes.
[109] Kaminsky, "The Politics of France's Subtraction of Obedience from Pope Benedict XIII, 27 July, 1398."
[110]. Kaminsky, "The Politics of France's Subtraction of Obedience from Pope Benedict XIII, 27 July, 1398."

university of Paris, neutrality was linked to the idea of withdrawal of obedience that a group of scholars, and most prominently Simon de Cramaud, advocated for. Cramaud was a functionary in the royal council and the crown's leader of the French clergy in the unionist policy that began with the death of pope Clement, leading up to the Council of Pisa. Cramaud was one of the chief architects of the policy of subtraction and laid out its theoretical aspects in his 1396/97 treatise *De Substraccione Obediencie*.[111] A treatise on Subtraction of Obedience was thus elaborated by Simon de Cramaud as a means to get both parties to give up their claims and restore the unity of the Church.

The idea of withdrawing obedience from the pope was however not entirely novel. The unconditional obedience of the pope was earlier put into question by writers such as John of Paris and Marsiglio of Padua who sought to challenge the authority of the pope and rearrange the relations in between the temporal and ecclesiastical spheres. The question of obedience was discussed in relation to the role of secular or temporal rulers in deposing the 'incorrigible and criminal' by John of Paris, in support of the Philip the Fair's dispute with Boniface VIII. John argued that cardinals could call for the secular arm to achieve the pope's deposition, although such actions would be considered 'indirect or accidental'.[112]

The authority of the pope was understood in two ways, the eternal one derived from his priesthood, and the authority in terms of his jurisdiction, which was acquired through elections by the college of cardinals who also possessed divine power. The pope, John argued, could thus have been deposed by the college or a divine authority of a general council. Obedience was primarily a question of jurisdiction, defined as having the right to determine just and unjust as opposed to dominion which pertained to the property rights or possession. Obedience was therefore 'removable' because it was gained through election. Not obeying or serving the pope was articulated as a form of indirect deposition *through* people by the prince or *by* people directly. The emperor had 'the power, by way of appropriating possessions of punishing persons physically, to employ anything and everything to ensure that no one obey or serve such a pope'.[113] Disobedience and deposition were thus linked together in John's text and also influenced later decisions of the French to withdraw obedience from the popes as a way of deposing them.

A more elaborate account of the question of obedience can be found in *Defender of Peace* from 1324 written by Marsiglio of Padua, a former rector of the university of Paris,

[111]. Kaminsky, "The Politics of France's Subtraction of Obedience from Pope Benedict XIII, 27 July, 1398."
[112] John of Paris, *On Royal and Papal Power*.
[113] John of Paris, 66.

whose texts, considered too subversive, were condemned by the Church as heretical. This text was another product of a conflict between the temporal and spiritual sphere, written for the Holy Roman Emperor Louis IV who was in conflict with Pope John XXII. This work further detached the concept of obedience from the narrative indivisibility and unity of body, making it a subject of choice. Obedience in his interpretation had been a useful and reasonable custom through which the 'unity of the faithful was better preserved'.[114] Obedience and belief of teachings and preaching of the Roman or other bishop was based only on good faith and mutual oath. The situation of a disorder however called for a different interpretation of the role of obedience.

According to Marsiglio, subjects had an obligation and a duty to obey their masters, unless this obedience in deed or word was not opposed to the divine law. Marsiglio separated divine law from the canon law, calling the canon law oligarchic ordinances, obedience of which was not necessary. Thus, to believe or obey the Pope or other bishop teaching or preaching the canon law meant dissolving the bonds of any 'civil order or realm'.[115] Marsiglio argued that obedience of a pope who went against the divine law, which had a higher authority. It was not necessary if it disturbed the 'peace and tranquillity of all those who live a civil life', depriving them of 'sufficient life of this present world' leading them ultimately to the 'eternal ruin of their souls'.[116] Obedience of the pope was in this case directly linked to the collapse of order.

This association of obedience of the pope with a disorder in society was re-articulated by Cramaud who pursued the idea that the withdrawal of obedience would lead to the peace and unity of the church. He provided a justification of how the 'limbs' could secede from the 'head', therein providing a canonical justification for the kings to command the withdrawal of obedience in his *De Substraccione Obediencie* which would eventually lead to a cession of the popes and thus a restoration of peace in the church.[117] The Schism, in Cramaud's view, was causing 'irreparable evils and scandals' and was 'subversive of the whole Christian faith'. Popes were identified as being responsible for the schism by rejecting the way of peace – the *via cessionis* promoted by France. Therefore, in Cramaud's view, they were both, schismatic and heretic, as one could not be schismatic without also being a heretic. According to him, neither of the popes should remain as 'the doubt in schism is so intricate' and 'there is so much

[114] Marsilius of Padua, *Marsilius of Padua: The Defender of the Peace*, ed. Annabell Brett, Cambridge Texts in the History of Political Thought (Cambridge, UK ; New York: Cambridge University Press, 2005), 404.
[115] Marsiglio of Padua, *Marsilius of Padua: The Defender of the Peace*, ed. Annabell Brett, Cambridge Texts in the History of Political Thought (Cambridge, UK ; New York: Cambridge University Press, 2005).
[116] Marsilius of Padua, *Marsilius of Padua: The Defender of the Peace*, 461.
[117] Kaminsky, "The Politics of France's Subtraction of Obedience from Pope Benedict XIII, 27 July, 1398."

uncertainty on the part of the church militant as a whole'.[118] Cramaud, vested the princes with 'canonical power against disturbers of the peace in the church', who could then enact the subtraction of obedience. Cramaud argued that princes could in the past hold 'judicial office' in order to judge delinquent clerics, and they could still in situations when 'the ecclesiastical power fails'. [119] Princes were allowed to sometimes hold the 'highest office of power within the church in order to use it to reinforce ecclesiastical discipline'. [120] The secular power did not hold judicial office in order to decide which of the competing popes was the rightful head of the church, who was just and unjust, but rather to enforce discipline in ecclesiastical relations. To further legitimise this transfer of power to lay rulers Cramaud designated the princes as 'God's ministers' - a function typically assigned to the pope - and linked them to divine power. This transfer of power was 'licit and expedient for the peace and union of the church' and therefore, 'who obeys them obeys god', he argued. [121]

Withdrawal of obedience was understood as a first step of the punishment which was 'suspension', therefore being of a temporary nature, and only after the 'malice increases', he argued, other steps were to be taken. [122] Aware of the potential problems that this might cause in the church, Cramaud also considered the situation when subtraction of obedience was not followed up by the popes' cession, making the church potentially 'headless'. To justify the church without a head as being a better situation than having a church with two heads, he referred to the example of Hainault. This polity was a part of Christendom that had not been obeying either of the popes for the past 19 years of schism, and as he argued, they 'get on well'. In fact, this situation, allowed for more 'freedom'. [123] This idea of headlessness was based on Marsiglio's *Defender of Peac*e, wherein he argued that the maintenance of unity of the faith is easier and more fitting with one head leading the others in pastoral office. However, 'even without it this unity of the faith could be safeguarded, although not so easily'.[124] Ultimately, according to Cramaud, withdrawal of obedience led to 'greater freedom', when juxtaposed to the situation of those who obey either of the two. Continuation of obedience of popes was represented as leading to total destruction of the church and non-obedience as its restoration.[125]

[118] Simon de Cramaud, "On Subtraction of Obedience," in *Simon de Cramaud and the Great Schism*, ed. Howard Kaminsky (New Brunswick, N.J: Rutgers University Press, 1983), 336.
[119] Simon de Cramaud, On Subtraction of Obedience, 336.
[120] Cramaud, 336.
[121] Cramaud, 355.
[122] Cramaud, 335.
[123] Cramaud, 350.
[124] Marsilius of Padua, *Marsilius of Padua: The Defender of the Peace*, 396.
[125] Cramaud.

It is therefore possible, in this interpretation, to be part of Christendom while not obeying the head of the Church, the pope.

As Kaminsky pointed out, subtraction of obedience which was in 1398 voted by Third Paris Council and put into practice until 1403 and then again in 1407, was a French novelty which served as a link between 'cession as voluntary abdication and cession as deposition'.[126] The renunciation of papacy by both contenders was to be immediately followed by a new election 'in a due legal form'. [127] The second subtraction of obedience was however of partial nature as it represented a compromise in the opposing camps. This second subtraction of obedience came to be known as neutrality and the link between these two concepts was later further reaffirmed in discussions taking place also outside of France.

Neutrality as a subtraction of obedience

At the turn of the century, subtraction of obedience began to be used interchangeably with neutrality as the French king started to organise secular leaders along the lines of neutrality in opposition to the popes who continued to refuse being deposed. Michelet's History of France describes the way the Act of Neutrality was issued in 1408. The reading of the royal letters by a university professor Pierre-aux-bœufs, which ordered that 'no obedience should be paid to neither pope' in his words was styled as the Act of Neutrality

> The reading took place in the grounds of Saint-Martin-des-Champs. This ordinance is not couched in the ordinary style of laws; but is visibly a sharp, violent, and not ineloquent factum, emanating from the University: 'Fall and perish we, sooner than the city of the Church. Let us no longer hear the voice of the barbarous mother, 'Divide the child, and let it be neither mine nor thine,' but the voice of the good mother, 'Give her the living child, and in no wise slay it'.

The quotation refers to the story of Solomon's judgment of a feud between two women to determine who is the true mother of the child. In this sense, withdrawal of obedience or neutrality is represented as a wise judgment, like that of the King Solomon and a necessary 'sacrifice' defined against the barbarism of the division.

[126] Kaminsky.
[127] Kaminsky.

The representation of neutrality as a wise decision can be found in the Chronicles of Froissart, famous for documenting the Hundred Years War between France and England, in which the idea of neutrality is reified as a distinct position of secular rulers, taking the term outside the discussions of law and jurisdiction. The efforts of French embassy to convince other monarchs to become neutral are described in the fourth book, written sometime in the early 1400s (he died ca 1405). Froissart, rather than using the Latin translation *neutrum/neutralitas*, uses the vernacular phrase '*se tourna neutre'* - to turn neutral - when describing the efforts of French king Charles VI to convince the neighbouring kingdoms and domains to withdraw obedience. Being neutral is presented as a wise decision which would lead to the union of the church. He states that 'all things considered, those who have been neuter between the two popes have acted wisely, and thus it behoves every one who wishes for union in the church'.[128] He then further described how the French king solicited the English king to 'engage his subjects to a neutrality between the two popes, until a new election shall take place'.[129] Richard then summoned a meeting of the prelates and clergy where he, 'eloquently harangued them on the miserable schism in the church, and the plan the king of France had adopted, of remaining neuter between the two rival popes, according to the advice of the university of Paris, and other learned clerks'. Neuter is thus seen as an attribute of the king, a property to be acquired. Froissart also noted that the 'kings of Scotland, Castile, Aragon and Navarre had followed this example, and all Germany, Bohemia and Italy intended doing the same'.[130] Froissart saw it as a task of the secular princes to end the Schism; it was up to the king of France and the German emperor to speedily attend to the Schism, otherwise the situation in church affairs would continue to deteriorate.

Following the efforts of French king to convince others to become neutral, debates about the withdrawal of obedience moved from France to other places, as Froissart also pointed out. For instance, deliberations took place at the University of Bologna in 1407 after being initiated by the Roman cardinals, who became infuriated and disillusioned by the obstructive tactics of the popes who promised to heal the Schism and restore unity.[131] According to Lewin 'the doctors of the University of Bologna declared that 'hardening of the heart' had transformed the schism into heresy, and that therefore it was necessary to refuse obedience to both popes as obstinate and heretical'.[132] The city of Florence also became increasingly more involved in

[128] John Froissart, *Chronicles of England, France, Spain, and the Adjoining Countries, from the Latter Part of the Reign of Edward II. to the Coronation of Henry IV.*, trans. Thomas Johnes (New York: Leavitt, Trow & Co., 1849), 654.
[129] Froissart, 674.
[130] Froissart, 675.
[131] R. N. Swanson, *Universities, Academics and the Great Schism* (Cambridge: Cambridge University Press, 2002).
[132] Alison Williams Lewin, "'Cum Status Ecclesie Noster Sit': Florence and the Council of Pisa (1409)," *Church History* 62,

promoting unity within Christendom and the advisers to Singory claimed that, 'for our peace and that of Italy, the unity of the Church is necessary'.[133] Initially, the Florentine leaders tried to arrange a meeting of the two pontiffs, which however did not take place because of their refusal. At least six embassies were sent by Florence between 1405 and 1408 in order to persuade the popes to meet in order to heal the schism.[134] However, a few days after France withdrew obedience, the option of being neutral began to be seriously considered in Florence. The Florentine initiative of subtracting obedience was therefore raised, and the counsellors agreed that 'when the French and Venetians declare neutrality, then we will do it'.[135] In an assembly of learned clerics, lawyers, and ecclesiastics held in Florence in February, it was to be ascertained whether Florence could legally and doctrinally adopt a position of neutrality.

In the final decision of the assembly it was stated that the Roman pope Gregory was 'a heretic and promoter of schism, that as an enemy and destroyer of the Christian faith he should be deposed from the papacy'.[136] One of the jurists, Stefano Buonaccorsi, a prominent canon lawyer and professor of canon law at the Studio Fiorentino argued before the Signory and colleges at one of the sessions, that Florence 'can and should withdraw obedience in accordance with God, and unless we make ourselves neutral we offend God and we sin'.[137] Similarly to the French scholastics, Buonaccorsi argued that neutrality was in line with divine law. However, unlike in France, in Italy neutrality also acquired connotations of profitability, being seen from for the first time also from a utilitarian perspective. Buonaccorsi considered whether this disavowal would be to the Republic's advantage, he argued that 'once this is in accordance with God it would doubtless profit us and also [that we should repudiate Gregory] on account of the temporal advantage'. [138] The neutral 'condition' was also considered in relation to the position of the Italian city states regarding other secular rulers and peoples. Not being neutral, he argued, would 'arouse many suspicions in the other peoples and princes'.[139] The consideration of profitability in relation to neutrality were then further developed by Machiavelli and Guicciardini on a more theoretical level in the sixteenth century, articulating it in the strategic form.

no. 2 (June 1993): 183, https://doi.org/10.2307/3168142.
[133] Lewin: 183.
[134] R. N. Swanson, *Universities, Academics and the Great Schism*, Cambridge Studies in Medieval Life and Thought, 3d ser., v. 12 (Cambridge; New York: Cambridge University Press, 1979).
[135] Alison Williams Lewin, "'Cum Status Ecclesie Noster Sit': Florence and the Council of Pisa (1409)," *American Society of Church History* 62, no. 2 (June 1993): 9, https://doi.org/10.2307/3168142.
[136]. Lauro Martines, *Lawyers and Statecraft in Renaissance Florence.* (New Jersey: Princeton University Pres, 2016), 294.
[137] Martines, 292.
[138] Martines, 292.
[139] Martines, 292.

Attempts to disentangle notions of neutrality and withdrawal of obedience also manifested around this time and were important for defining neutrality in more secular terms, having origins in early reformation movements. A Czech theologian Jan Hus, whose writings inspired the reformation movement of Hussites, declared that he is neutral as to the controversy of the pope and anti-pope and their breaking of the oath in a letter written to Zbinek, the Archbishop of Prague in early December 1408. In this letter, Hus sought to clarify his use of neutrality and how it differed from the others who are ignorant about the fact that 'neutral' (*neutralis*) is a relative term and therefore required a context of the subject matter.[140] To be neutral, he pointed out, was not intelligible unless alternatives were attached to this concept. According to him any third person that refused to obey either of the two is not necessarily neutral. There was a difference between neutrality concerning obedience and neutrality concerning a conflict:

> […] if the mother of Peter quarrels with his father, Peter as a faithful son ought to be neutral in his support in the dispute between his father and mother, while at the same time he ought to obey father as well as mother in matters lawful. Hence Peter ought not to be neutral so far as obedience is concerned, but only so far as his support in the dispute is concerned; for he ought as far as possible to prevent a dispute of this kind, in order that, peace being restored, his father and mother may more securely be united in love and beget brothers for Peter.[141]

Hus thus distinguished between neutrality concerning obedience and neutrality concerning a conflict. Neutral is defined as a 'third person' to the dispute of two. Obedience of the Church is still desirable for him. Being neutral therefore did not necessarily grant one an exception from the jurisdiction of the Church and diminished the authority of the Church and papacy but was be limited to a denial of a support for a dispute. Hus stated in the letter that he has 'not departed from obedience to the Roman pontiff Gregory XII […] but desired to obey the Roman Church and its lord in all lawful matters'.[142] The schism was no longer represented as a wound to heal, as something affecting the body, but rather as a dispute between two individuals – two bodies. This modification of neutrality was important for its later conceptualisation as a strategic decision in a dispute between other princes.

[140] Jan Hus, *Letters of John Hus*, ed. Herbert B. Workman and R. Martin Pope (London: Hodder and Stoughton, 1904), 19.
[141] Hus, 20.
[142] Hus, 20.

The political form of neutrality that emerged during this period was important for allowing articulation of authority of the secular rulers as being ontologically separate from the pope, contributing to the separation of politics from theology and the gradual establishment of an autonomous sphere of action with its own rules, goals, and norms. While the idea of neutrality as a withdrawal of obedience did not immediately disappear and it was invoked again in 1438 during the conflict between the Pope and Council by the German emperor, it gradually gave way to different meanings of neutrality that continued the work that Hus and Buonaccorsi began. The concept of neutrality was then further modified and gained a more theoretical expression in the next century, as the nature of conflicts shifted, and new polities consolidated themselves.

2. Between Friends and Enemies

With the rise of national churches and the processes of Renaissance and Reformation, the hierocratic understanding of the medieval European society as a unified spiritual whole was no longer sustainable and was hard to reconcile with the lived experience of that time. As the order based on religious unity slowly dissolved, the concept of neutrality was modified to accommodate the new situation of intense warfare in Europe. Neutrality completely shed its attachment to papal obedience, and the in-between position of neutral began to be discussed in relation to wars and alliance-making. During this period, it was reified as a strategic form which referred to a means of preservation and expansion of prince's 'state', and a neutral started being defined by their position in relation to friends and enemies. The concept was then further modified to encompass the considerations of power and the advantage of time. While the strategic form of neutrality was dominant during this period, the ethico-normative form of neutrality was also articulated in the process of contestation as a solution to the problem of universal empire, and a means of establishing balance of power among princes.

This changes in the use of the concept of neutrality corresponded with the European experience of conflicts and violence across the continent which intensified after the Hundred Years War and the failure of Conciliarism to reform the church. The intellectual challenges of Renaissance and Reformation were combined with the experience of intensifying warfare in Europe such as the French, Spanish, and Portuguese unification wars, the Italian wars involving different kingdoms, city-states, and the papal states, and subsequent reformation wars which plunged Europe into an internal turmoil. Substantial vocabulary had to be (re)invented to address the problems of cooperation and conflict that the newly consolidated European polities faced now that the established institutions of the Christian Church lacked legitimacy, and its foundational ideas were questioned. Neutrality was then re-imagined from the problem of obedience of pope to the problem of cooperation and conflict between European polities when it was used for discussing the problems of alliance-making.

The religious unity and authority of papacy which had been already significantly weakened by the Schism and the Conciliar movement were further destabilised through Reformation movements. The 16th century protestant insurrection engendered a political crisis that eroded the legitimacy of traditional religious authorities, especially theologians, and their

religious justifications.[143] The ideas of Luther were important in undermining the foundational dichotomy of spiritual/temporal that underlined claims of papal authority, and eventually culminated into the demise of the religious unity of Christendom. Luther explicitly questioned the dichotomy of spiritual/temporal which separated society into two groups, calling it a lie and a hypocrisy, stretching the category of spiritual to now include all individuals, and thus putting them on the same horizontal plane, with all being equally close to God. According to Luther, all Christians were 'truly of the 'spiritual estate,' and there is among them no difference at all but that of office […] for baptism, Gospel and faith alone make us spiritual' and a Christian people'.[144] In Luther's terms everyone that was baptised was by that means already a 'priest, bishop, and pope', although he added that not everyone should exercise that office.[145] While eliminating the monarchical function of the Pope, as Erik Voegelin pointed out, he turned every Christian into 'his own fallible pope' which had the consequence of launching what Voegelin termed 'an anarchy of conflicting interpretations'.[146]

Luther, following Hus, also redefined the way one could gain access to knowledge. It was no longer only the ordained clergy, those 'closest to the God', who were empowered to interpret the Scripture, but according to him, it should be up to every individual. In terms of hermeneutics, Voegelin noted, judging Scripture through individual's understanding of faith elevated the faith which guided individuals in understanding, while at the same time it decreased the importance of the Scripture.[147] As the social unrest of the 1520s unfolded, Luther was compelled to separate the heavenly and earthly king, emphasizing that religious obedience was to be paid to the secular ruler, since the sinners belonged to the earthly kingdom and their punishment (by war if necessary) rested with their prince.[148]

The image of the mystical body of Christ with its emphasis on a unity that was consolidated around the head – the Pope, thus began to be dismantled from the inside. The claims of divine authority however continued to be present among the newly consolidated monarchies and used to justify their 'empire'. The unity was now being consolidated under the national monarchies of France, Spain, or England which emerged under the revived rhetoric of empire, claiming divine origins to legitimise their orders.

[143] Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*, 1st ed. (Cambridge University Press, 2021), https://doi.org/10.1017/9781139019774.
[144] Martin Luther, "An Open Letter to the Christian Nobility of the German Nation Concerning the Reform of the Christian Estate, 1520," in *Works of Martin Luther With Introductions and Notes*, ed. and trans. Charles. M. Jacobs, vol. 2 (Philadelphia: A.J. Holman Company, 1916), 66.
[145] Luther, 68.
[146] Eric Voegelin, *History of Political Ideas: Volume 4. Renaissance and Reformation*, The Collected Works, Eric Voegelin ; 22 (Columbia: University of Missouri Press, 1998).
[147] Voegelin.
[148] Koskenniemi, *To the Uttermost Parts of the Earth*.

Given the practical problems rulers faced in terms of their external relations as warfare was not solely limited to civil wars of religion, the friend/enemy way of conceptualizing relations between princes became more relevant than the vocabulary available in scholastic sources. As Evgeny Roshchin pointed out, the social and political transformations taking place during the Renaissance and Reformation period in Europe saw a proliferation of a number of new practices and multifaceted motivations for alliance making that were no longer conditioned by a common action aligned for the sake of common faith. 'New political circumstances, manifested in a greater number of concluded agreements and compacts, required a new vocabulary, new conceptual means of description and reflection, new taxonomies and new definitions'.[149] According to Richard Tuck, there were two distinct traditions of thinking about war and peace in late sixteenth-century Europe: the conventionally called humanist and scholastic traditions, or as Tuck referred to them, 'theological' and 'oratological' traditions based on the types of knowledges these authors drew on. The oratological one drew on literary and rhetorical works from antiquity and the theological one other drew on the literary works of the early Christianity combining them with literature of the Greek philosophers and the 'systemic jurists of Rome'.[150] Neutrality was firstly developed within the 'oratological' tradition in Italy, in which thinkers of that time turned to knowledge from classical Roman and Hellenic sources, from which the categories of friend and enemy were adopted to make sense of the circumstances in Europe. Thus, we can find neutrality being discussed in relation to friends and enemies firstly in the works of Nicolo Machiavelli and Francesco Guicciardini.

The introduction of these new texts led to new claims of authority and morality. At the beginning of the fifteenth century classical education became very important in Florence and Venice and the ruling elites began to see themselves 'as the heirs of Rome and defenders of republican liberty, stability, and law'.[151] Roman emperors, most prominently Julius Caesar, were invoked by Renaissance humanists as role models for their moral virtue and military might that European princes and monarchs were to emulate in their pursuit of power and glory.[152] The civic humanism that blossomed in Italy and later spread to other parts of Europe offered 'an alternative moral foundation of political community that preferred ancient virtu and republican

[149] Evgeny Roshchin, *Friendship among Nations* (Manchester University Press, 2017), 84, https://doi.org/10.7765/9781526116451.
[150] Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*, Repr (Oxford: Oxford Univ. Press, 2009).
[151] Anthony Grafton, "Humanism and Political Theory," in *The Cambridge History of Political Thought 1450–1700*, by Mark Goldie, ed. J. H. Burns, 1st ed. (Cambridge University Press, 1991), 12, https://doi.org/10.1017/CHOL9780521247160.003.
[152] Jens Bartelson, *Becoming International*, 1st ed. (Cambridge University Press, 2023), https://doi.org/10.1017/9781009400718.

liberty to Christian charity and promise of salvation'.[153] The Aragonese rulers of Naples, Visconti rulers of Milan, and even the papacy equally began to employ humanists in their service for the sake of legitimation of their political goals and achievements.[154]

Although, as Phillips pointed out, Aristotelian concepts and ideas had been making their way into Europe already since the 13th century, the Church was no longer capable of appropriating these concepts and ideas in a way that upheld their vision of the order based on papal supremacy, as was done for instance by Thomas Aquinas. The classical inheritance became close to impossible to assimilate after the fall of Constantinople and the flood of Greek texts from across Mediterranean that incentivised European intellectuals to use them. The invention of the printing press then helped to disseminate new interpretations of texts on unprecedented levels.[155] The bottom up legitimisation of political authority which was no longer linked to the salvation mission of the Church was ushered through via adoption of 'Aristotelian conceptions of the polis as an autonomous community - one brought into being by man's natural propensity towards sociability suggested an alternative, 'bottom up' justification for political authority not tied to the Church's salvation mission'.[156] This led to a gradual shift of conceptualization of a man and his-being-in-space through the prism of vertical hierarchical chains of being, as it was reimagined and reconstituted in a way that gradually delegitimised the claims to 'sovereignty' positioned above the 'state'.[157] According to Larkins, the modern territorial imaginary was established in the Renaissance period, in which the dominant spatial theme opposed inside and outside, with 'territorial sovereignty' being delineated on a horizontal level.[158]

Charlotte Epstein also highlighted the importance of new scientific discoveries that contributed to this change in perception of the space. The scientific discovery of laws of inertial motion and infinity put into motion a change unfolding over two centuries during which the unity of a 'body' had to be re-constructed. She argued that a de-anthromorphised space gradually replaced the medieval understanding of the Aristotelian place, in which nature did considerable epistemological work - prescriptive and explanatory - in a world where natural and social order were seen as a seamless continuum.[159] As she put it: 'a closed, spatially

[153] Andrew Phillips, *War, Religion and Empire: The Transformation of International Orders*, Cambridge Studies in International Relations 117 (Cambridge ; New York: Cambridge University Press, 2011), 75.
[154] Grafton, "Humanism and Political Theory."
[155] Phillips, *War, Religion and Empire*.
[156] Phillips, 73.
[157] Jeremy Larkins, *From Hierarchy to Anarchy* (New York: Palgrave Macmillan US, 2010), https://doi.org/10.1057/9780230101555.
[158] Larkins.
[159] Charlotte Epstein, *Birth of the State: The Place of the Body in Crafting Modern Politics*, 1st ed. (Oxford University Press, 2020), https://doi.org/10.1093/oso/9780190917623.001.0001.

differentiated, highly static and deeply hierarchical world, in which everything rested in its assigned place, the cosmos, came to be replaced by a value-free unconfined and infinitely open world of ceaselessly moving bodies held together merely by the laws of motion, the universe of modern space'.[160] The importance of body in conceptualizing neutrality no longer conceived in terms of its overall health, but the focus shifted on the person of the ruler and their qualities – namely the person of a prince or a king. The relations between the individual bodies and their coexistence were often expressed in terms of friendship and enmity, in connection to which neutrality was re-defined.

It is however important to note that claims of divine origins persisted among major European powers such as Spain, France, or Britain and were combined with the language of Roman virtues to justify new imperial projects. As Phillips pointed out, the classical revival supplied rulers with intellectual resources through which they could in a more self-conscious and sophisticated way renegotiate their ties with the Church, rather than directly severing them.[161] This widespread adoption of values and symbols of the Roman empire however also led to a 'a fierce competition for honor and liberty among European powers, bolstered by claims to uniqueness and superiority, thereby translating the Roman quest for universal empire into multiple quests for the aggrandisement of particular empires', as Jens Bartelson pointed out.[162]

Neutrality and princes' counsel

As thinking about the organization of relations among different polities that was no longer constrained by the binary of spiritual and temporal, articulations of neutrality were also adjusted. The term was taken out of the context of papal jurisdiction and obedience of the pope, in order to be used to discuss relations within the nascent 'international' space – for which there was no name yet, as it was seen as simply an extension of the qualities of rulers and their choices. The problem of whether one should be neutral or not was no longer about the authority of and loyalty to the Church and Papacy; it started to be discussed in terms suggested earlier by Hus and Italian lawyers – staying outside of a dispute between two vertically positioned persons and how this can be beneficial for the rulers. Neutrality was transformed and reified into a strategic form as a means of preservation and expansion of prince's state. The multiplicity and diversity of bodies was no longer conceptualised merely in terms of the inclination of peoples

[160] Epstein, 18.
[161] Phillips, *War, Religion and Empire*, 77.
[162] Bartelson, *Becoming International*, 230.

to choose their form of government, the legitimate form of authority, but in terms of their inclination towards making relations among themselves – friends and enemies.

Although 'international' friendship treaties existed already in Middle Ages, scholars pointed out their scarcity. 'The 'Aristotelian' idea of friendship 'in a political sense', or friendship as a basic agreement about the nature of a polity and co-existence', Roshchin noted, was 'an easily identifiable trope in Humanist discourses on the constitution of polities, literary works and political rhetoric'.[163] Friend and enemy were some of the key categories in which the post-medieval order in Europe was re-imagined, and the 'international' space to the extent it was theorised, was discussed in these terms by the humanist authors of that time. Nicolo Machiavelli's and Francesco Guicciardini's discussions of neutrality were crucial for further conceptualization of neutrality during this period. It is through these accounts that neutrality became connected with the binary of friend and enemy, which were part of the new vocabulary introduced to accommodate the experiences of that time to which the construct of papal cosmology could not give meaningful expression.

As Martti Koskenniemi pointed out, for both Machiavelli and Guicciardini, 'the old language of Christian republic and universal monarchy connoted abstractions behind which particular rulers – the French and Spanish kings, and of course Charles V – hid their designs on the resources of Northern Italy'.[164] Unlike for the kingdoms of France or England, claims about eternal existence were not readily available to the Italian city states. Instead of the abstractions of universal monarchy, their political analyses zoomed in on the actual existential conditions of the political communities, and what was 'necessary' in the face of internal and external threats in a given situation.[165] Machiavelli, as R.B.J. Walker put it, focused on 'the possibilities of greatness in time, a greatness that is not in need of completion by either philosophy or grace'.[166] The political greatness of the prince thus depended on his ability to make judgments in the midst of temporal flux and contingency.[167]

This is also reflected in his discussion of neutrality in *The Prince* and *Discourses*. Machiavelli considered neutrality as a matter of 'statecraft', a judgement that the prince could take for the sake of preservation or expansion of the 'state'. The state, however, at this point

[163] Roshchin, *Friendship among Nations*, 57.
[164] Martti Koskenniemi, "'NOT EXCEPTING THE IROQUOIS THEMSELVES...' Machiavelli, Pufendorf and the Prehistory of International Law" (Max Weber Lecture Series MWP- LS 2007/07, European University Institute, Florence: European University Institute, Italy, 2007).
[165] Koskenniemi.
[166] R. B. J Walker, *Inside/Outisde: International Relations as Political Theory* (Cambridge, GBR: Cambridge University Press, 1992), 39.
[167] Walker, *Inside*.

was not perceived separate of the person of the prince.[168] Machiavelli attributed to neutrality negative connotations and considered it a strategy which was 'erroneous' and associated with indecisive princes. In *The Prince* the term comes up in a chapter discussing the prince's esteem and glory, and neutrality is given as a counterexample of what is useful for achieving these virtues. Machiavelli begins by praising the King of Spain for attaining fame and glory as the 'first king in Christendom' through his war enterprises in Europe as well as in Africa, while also securing his position in the internal affairs because everyone's mind would be occupied by wars. In line with this, esteem could be further achieved when the prince is a 'true friend or a true enemy, that is, he declares himself without reserve in favour of some one or against another'.[169] Joining someone else's war enterprise was seen as more useful for a prince, while being neutral was considered as destructive for a prince's position as a friend among other princes. According to Machiavelli, 'whoever wins will not desire friends whom he suspects and who do not help him when in trouble, and whoever loses will not receive you as you did not take up arms to venture yourself in his cause'.[170] A neutral prince's position as a friend would be compromised in front of both the victor and vanquished, who would see him as someone suspicious and unreliable for military support. Against the idea of a 'true friend' who joins the alliance, the neutral thus gains the identity of a false friend. From the perspective of preservation of the 'state' and the prince's position within the state, it was further characterised as a quality of 'irresolute princes' that would eventually ruin them.[171]

In his later work *Discourses* (1531), Machiavelli discussed neutrality as an 'erroneous judgement' – a judgement that 'superior men' would not have made. To illustrate this, Machiavelli used the example of the pope remaining neutral during the French king's quest to recover the Duchy of Milan, which was defended by the Swiss. The advice that the pope was given by the councillors was that the surest way to victory 'would be to have neither the king of France nor the Swiss too powerful in Italy, and that, if he [the Pope] wished to restore the Church to her former liberty, it was necessary to free her from the yoke of both the one and the other of these powers'.[172] This strategy, as Machiavelli described consisted in waiting until one party had defeated the other, and subsequently the Church having the aid of its friends would have defeated the weakened victor. And thus, the Pope would 'with great glory to himself,

[168] Harvey C. Mansfield, "On the Impersonality of the Modern State: A Comment on Machiavelli's Use of Stato," *The American Political Science Review* 77, no. 4 (1983): 849–57, https://doi.org/10.2307/1957561.
[169] Niccolò Machiavelli, *The Prince and the Discourses*, ed. E. R. P. Vincent, trans. Luigi Ricci (New York: Carlton House, 1900), 83.
[170] Machiavelli, 83.
[171] Machiavelli, 83.
[172] Machiavelli, 355.

remain master (signore) of Lombardy and arbiter of Italy'.[173] This, although not explicitly stated was an idea of neutrality as a balancing mechanism, which would be more thoroughly elaborated later by Bodin. The idea of having both parties stay equally powerful was viewed only in the interest of the neutral, not as a systemic mechanism. It was seen as springboard for further conquests and dismissed by Machiavelli, arguing that the Church was saved only due to the indifference and humanity of the French king who did not care enough for the victory and opted for a peace treaty with the Church. A neutral prince was once again at the mercy of the victor. The advice to be neutral was therefore founded upon reasons which he considered to be 'entirely false'. For Machiavelli, a neutral prince faced problems in both internal and external affairs. Among friends and enemies, it led to the destruction of his status as a friend or becoming prey to the victorious enemies. Internally it was seen as an irresoluteness that would destroy the prince's position within the 'state'.

This characterization of neutrality needs however, to be put in the context of another concept of 'virtu' which replaced Christian ethics. As Meinecke pointed out, all of Machiavelli's real and supreme values were concentrated in 'virtu', a concept with numerous meanings that he adopted from the humanist and antique tradition and reinterpreted in a unique way.[174] It encompassed ethical qualities but also embodied something that was dynamic and natural for man – 'heroism and the strength for great political and warlike achievements, and first and foremost, perhaps, strength for the founding and preservation of flourishing states, particularly republics'.[175] Against these normative standards, there was no room for an optimistic evaluation of neutrality.

However there was no explicit theorization of the 'outside' and as R.B.J. Walker pointed out, Machiavelli's concern over military and international affairs was 'a consequence of his account of the possibilities of political life within states'.[176] Similarly Koskenniemi argued, that the 'international' did not yet possess a 'specific identity as a field of politics or a set of problems' and it would be seen either as a source of threat embodied by imperial politics of others, or a space for prospective imperial politics.[177] In this construction of the international in which princes could be either friends or enemies, neutrality could only be conceptualised as a false friendship, or an error in judgement. The plurality was then articulated in antagonistic

[173] Machiavelli, 355.
[174] Friedrich Meinecke, *Machiavellism: The Doctrine of Raison d'État and Its Place in Modern History* (New Brunswick, N.J: Transaction Publishers, 1998).
[175] Meinecke, 31–32.
[176] Walker, *Inside*.
[177] Martti Koskenniemi, "'NOT EXCEPTING THE IROQUOIS THEMSELVES...' Machiavelli, Pufendorf and the Prehistory of International Law" (Max Weber Lecture Series MWP- LS 2007/07, European University Institute, Florence, 2007).

terms shifting from Hus' idea of mother and father who are united through a common household. Machiavelli considered war to be a ubiquitous presence in the policies of ambitious rulers and the only relevant question was the one concerning the prince's wisdom.[178] In other words, the 'international', to the extent it was constructed, was a space inhabited by either friends who could potentially support you against a threat, or enemies who themselves represented a threat.

A less sceptical view about the nature of relations between different subjects occupying the space that would be later called 'international' was introduced by Machiavelli's contemporary Francesco Guicciardini, who had a long and renowned career in the service of Medici popes. In his *Counsels and Reflections* (1530) considerations of power enter his discussion of neutrality. According to him 'to be neutral in the wars waged by others is a wise course for him who is in himself so strong that whichever side prevails he has no cause for fear'. [179] Rather than friends and enemies, Guicciardini defined neutral princes in relation to a less-charged term of 'neighbour'. 'For he keeps clear of trouble himself, and may hope to profit from the troubles of his neighbours'.[180] He then pointed out that if one is not in this position of strength, neutrality was an 'indiscreet and hurtful choice' and he concluded in line with Machiavelli, that it would leave a prince as a 'pray' to both victor and vanquished.[181] If the prince was to opt for neutrality, he needed to 'secure' himself through strength or by a treaty to specify the terms of neutrality. A treaty in this case was not necessary to be made with both sides. The terms of neutrality should be arranged with 'the side that desires it' which in itself was 'a way of taking part with that side, which if victorious, may perhaps be withheld form harming you by some sense of obligation or scruple of honor'.[182] Therefore, neutrality secured through a relative position of strength of the neutral prince can lead to profits from the neighbours' problems and neutrality backed by a treaty could save you from harm by the victor.

Both of these types of neutrality were conceptualised as choices or judgements of princes, which were juxtaposed against the 'most fatal' type of neutrality stemming from 'irresoluteness', which Guicciardini associated with a specific type of government. Commonwealths, rather than a prince, were more likely to take this path as they were more prone to be 'divided in their councils', unable to take one option over the other, and make up

[178] Koskenniemi.
[179] Francesco Guicciardini, "Counsels and Reflections of Francesco Guicciardini," trans. Ninian Hill Thomson (Kegan Paul, Trench, Trubner, & Co., LD., 1890), 68.
[180] Guicciardini, 34.
[181] Guicciardini, 34.
[182] Guicciardini, 105.

their mind of whether to take side or not.[183] In contrast to Machiavelli, this irresoluteness consisted of not being able to choose between taking side and remaining neutral rather than not choosing *between* two sides.

Guicciardini thus did not completely reject neutrality as a course of action for wise leaders and distinguished between different types of neutrality based on assurances provided. This was the case perhaps also because his vision of 'international' was less pessimistic about the structures of rule and cooperation present in this space, than Machiavelli's. Guicciardini saw this space as something which could be managed and balanced by the prince as was elaborated in his *History of the Wars of Italy* (1537). Central to this work were his reflections on the diplomatic system of northern Italy that had sustained peace for fifty years before the French invasion of Italy.[184] As Koskenniemi pointed out, having admired the diplomatic practice of Venetians, Guicciardini saw the 'international' as a realm of cooperation and sometimes conflict, which could be used by the princes for the sake of obtaining their objectives. Those outside of the city were not necessarily immediately friends and enemies, their multiplicity was articulated as 'neighbours'. However, neither Machiavelli nor Guicciardini articulated a view of the 'international' as 'a single social space ("universal"), detachable from the ambition or fear of this or that ruler'.[185] While Machiavelli, viewed the space beyond the City as one of either fear or imperialism, Guicciardini viewed as it something that could be managed and balanced.

Against the universal monarchy

The close link between the categories of friendship and neutrality could also be observed beyond the context of Italian city states. Beginning to be normalised across Europe, it came up also in the discussions regarding the position of Henry VIII in the dispute between France and the Pope. The French term 'neuter' was used to designate that the English king would remain a 'common friend' of both the Pope and Francis, the king of France.[186] The concept thus appeared to be used in practice by the European rulers and their advisors during the sixteenth century. The most interesting discussion of this term could be found in the famous treatise of Jean Bodin,

[183] Guicciardini, 34.
[184] Koskenniemi, *To the Uttermost Parts of the Earth*, 214.
[185] Koskenniemi, "'NOT EXCEPTING THE IROQUOIS THEMSELVES...' Machiavelli, Pufendorf and the Prehistory of International Law."
[186] James Gairdner and R.H. Brodie, eds., *Letters and Papers, Foreign and Domestic of the Reign of Henry VIII: Preserved in the Public Record Office, the British Museum and Elsewhere in England*, vol. 17 (Vaduz: Kraus Reprint LTD., 1965).

which incorporated ideas discussed by Machiavelli and Guicciardini and for the first time articulated neutrality as something resembling an institution. Bodin's *Six Books of Commonwealth* (1576), famous for its conceptualization of law as a sovereign command which was a response to the mixed government theories of the Huguenots and Leaguers used to legitimise rebellion against the crown.[187] Less known however, is Bodin's discussion of how to prevent the establishment of universal monarchy by other European powers.

Concerns over universal monarchy, as Franz Bosbach, pointed out, applied only to European great powers and were used in situations when 'one of them was suspected of illegal power politics against the rest of Europe'.[188] Most frequently it appeared in the context of rivalries between the French king and the house of Habsburg but it was used when discussing preponderance of any European polity.[189] Although as Bartelson pointed out, these claims of universal empire were constructed similarly to the prince's 'state' as an extension of princely power, rather than signifying an 'entity capable of existing independently of rulers as well as ruled'.[190] These claims of universal monarchy in Europe were often met with resistance through the rhetoric drawing on 'humanist legal framework that emphasised the right to wage preventive war to counteract and deter such attempts'.[191] This, as will be discussed later, was exemplified in Gentili's writings. Bodin however introduced a different solution by rearticulating the concept of neutrality against these claims of universal monarchy and connected it with the idea of balance of power. The discussions of neutrality thus moved from the problem of good counsels for princes and kings to how to manage the boundless claims of political authority by the European rulers.

What both Bodin and Gentili shared in their concerns over universal monarchy in Europe was the idea that it should be replaced by a situation of balance. The term balance of power was popularised by Guicciardini, borrowing it from Bernardo Rucellai (1448/9–1514).[192] In his *History of the Wars of Italy* (1537), Lorenzo de Medici with his alliance saw to it that 'the Italian situation should be maintained in a state of balance, not leaning more to one side than to the other'. (p.6-7) Guicciardini praised Lorenzo de Medici's management of the balance of power via 'the skillful use of persuasion and threats, deception and limited violence'.[193] In Bodin's treatise, this term is taken outside of the Italian city-states context onto a level of more

[187] Phillips, *War, Religion and Empire*.
[188] Franz Bosbach, "The European Debate on Universal Monarchy," in *Theories of Empire, 1450-1800*, ed. David Armitage, Expanding World, v. 20 (Aldershot [England] ; Brookfield, VT, USA: Ashgate, 1998), 81.
[189] Bosbach, "The European Debate on Universal Monarchy."
[190] Bartelson, *Becoming International*, 37.
[191] Bartelson, 37.
[192] Izidor Janžekovič, "The Balance of Power in the Renaissance," *History of Political Thought*, 40, no. 4 (2019): 607–27.
[193] Koskenniemi, *To the Uttermost Parts of the Earth*.

theoretical generalization about the problem of all princes being in league against each other, which in the days of claiming universal dominion was a logical possibility. In this case the role of neutral balancer was connected to mediation of peace and thus related to a form of diplomatic practice.

In the Book 5 chapter *Of the suertie of alliances and treaties betwixt Princes and Commonweales, and of the lawes of armes,* the neutral or *Neuter's* position and function was defined vis-à-vis other princes, transcending the issue of wise judgments of rulers and was discussed on a systemic level. For, Bodin the 'international' was inhabited by polities with different natures, humours, and dispositions and how these, along with geographical conditions determined the distinct ways in which they approached the same problems.[194] This way of thinking had origins in the earlier discussions of the multiplicity of bodies based on Galenic and Hippocratic theories of health. Contrary to this, Machiavelli's underlying assumption was that of a historically unchanging human nature: 'Whoever considers present and ancient things easily knows that in all cities and in all peoples there are the same desires and same humours and have always been'.[195] Once these differences have been acknowledged and analysed, solutions to the disagreements can also be found. The differences between peoples were reconciled through introduction of the '*jus feciale*' which regulated the relations among them.

As Merio Scattola's study shows, the concept of *jus feciale* originated in Roman Law, denoting '(international) law of war and a law of heralds, grounded in religious rites and ceremonies of communities'.[196] It was considered as a 'rudimentary species of international law' and all the relationships included in *jus feciale,* first and foremost depended on a principle of faith or loyalty (fides).[197] Scattola thus considered it an alternative to the natural law of nations, with *jus feciale* being a form of natural law that bound commonwealths. According to Bodin, relations within a commonwealth were governed by *maiestas* or sovereignty and required political subordination, while the relations outside, where subordination was not possible or was lost, were ruled by fides.[198] The insistent presence of the principle of faith, Scattola pointed out, was a response to Machiavelli who was indirectly referred to in the subject

[194] Merio Scattola, "Jean Bodin on International Law," in *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, ed. Stefan Kadelbach, Thomas Kleinlein, and David Roth-Isigkeit, First edition, The History and Theory of International Law (New York, NY: Oxford University Press, 2017).
[195] David Roth-Isigkeit, "Niccolò Machiavelli's International Legal Thought: Culture, Contingency, and Construction," in *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, ed. Stefan Kadelbach, Thomas Kleinlein, and David Roth-Isigkeit, First edition, The History and Theory of International Law (New York, NY: Oxford University Press, 2017), 23.
[196] Tilmann Altwicker, "International Law in the Best of All Possible Worlds: An Introduction to G.W. Leibniz's Theory of International Law," *European Journal of International Law* 30, no. 1 (May 24, 2019): 143, https://doi.org/10.1093/ejil/chz010.
[197] Scattola, "Jean Bodin on International Law."
[198] Scattola.

index as 'the defender of a perverse kind of politics applied by Pope Alexander VI and by his son, Cesare Borgia'.[199] For Bodin, faith was 'the only foundation and support' of justice, underpinning not only the Commonwealth but all the human society. Therefore, he argued, 'it must remaine sacred and inuiolable in those things which are not vniust, especially betwixt princes: for seeing they are the warrants of faith and oathes'.[200] The existence of the fides was then crucial for explaining why sovereigns adhere to the treaties – including treaties with neutrals. It wasn't just power that was determining the validity of treaties. For Bodin, there was a great difference between a neutral 'without the friendship either of the one or the other, and a neuter allied to both parties', and it is the latter which he focuses on.[201]

Bodin associated the neutral with a position of indifference (rather than indecision), elevating him into a place from which he could be the arbiter of disputes among the secular princes. He was the first to give expression the ethico-normative role of neutrality, which pertains to the role of neutral as establishing and mediating peace. If all the princes are partaking in alliances, he argued, there was a need for an indifferent friend who could 'mediate peace' and reconcile their differences. Bodin did not make a difference between mediation and arbitration. He imagined the neutral as both an 'indifferent judge' and 'arbiter' to take over the position that the pope held within the medieval Christian society. In his words

> […] the quarrels betwixt princes are decided by friends that stand indifferent, and especially by those which exceeded the rest in power and greatness, as heretofore many Popes which knew well how to maintain their rank, and reconcile Christian princes, have reaped honor, thanks, and assurance for their persons and estates, and those which have followed either the one or the other party, have drawn after them the ruin of other Princes.[202]

It was not just any neutral who could hold this position, as is obvious from this quote. The considerations of power and also greatness came into play. The greatness of the French kingdom had been claimed through divine origins in earlier writings of Claude de Seyssel, *The Monarchy of France* or the *Memoirs of Philp de Commynes,* with an insistence on the French king being the 'most Christian king'. [203] Bodin's notion of sovereignty itself was based on an

[199] Scattola, 84.
[200] Jean Bodin, *The Six Bookes of a Commonweale. Written by J. Bodin a famous lawyer, and a man of great experience in matters of state. Out of the French and Latine copies, done into English, by Richard Knolles*, trans. Richard Knolles (London: Im, 1606), 626–27, https://doi.org/10.4159/harvard.9780674733169.
[201] Bodin, 624.
[202] Bodin, 624.
[203] Claude de Seyssel, *The monarchy of France*, ed. and trans. Donald R Kelley, 1981, http://www.jstor.org/stable/10.2307/j.ctt1dszwn8.

analogy of God's power as law-giver. This superiority, as Donald Kelley pointed out, was articulated also in other expressions such as the French king being the 'emperor in his kingdom' who 'recognised no superior in temporal things' or 'is above all kings' and was invoked by 16th century French jurists such as Jean Ferrault and Charles de Grassaille. The intention of this was to assert an independence of the crown from the canon law, as well as from feudal and civil laws.[204]

Bodin however recognised that claims of universal sovereignty could be a problem when other European powers invoked them as well. Therefore, when he spoke of 'great princes', this greatness was not articulated in terms of divine origins, but horizontally, in relation to other princes. As he explains, 'the greatness of a prince (to speak properly) is nothing else but the ruin and fall of his neighbors: and his strength is no other thing, but the weakness of another'.[205] He saw neutrality as a matter of common good and security, as he explained the function of a *Neuter* on a higher level in terms of what we could today call balance of power. Cautious of the unlimited claims of sovereignty towards others Bodin argued that it was dangerous for a Prince 'to increase in power as he may give law unto the rest and invade their estates when he pleases. It is true, and there is no greater occasion then that, to induce a neuter to seek by all means to hinder him; for the surety of Princes and Commonwealth consists in the equal counterpeeze of power'.[206] Citing an example from Livy, he argued that there was nothing better for the security of estates than 'to haue the power of great Princes as equall as might be'.[207] The role of the *Neuter* was thus to stand aside instead of joining forces with others, and counterbalance other princes which would provide security not only for the commonwealth but also for others.

European thinkers were now becoming increasingly concerned about the dangers of universal domination of one over the rest, and thus sought to provide a counter-mechanism to this, outside of Christian scholastic thought. Concern for the universal dominion of one sovereign over others was present also in the writings of just war theorists and the idea of balancing travelled from Giucciardini's work also to the new theory of natural law. Alberico Gentili's work *De Iure Belli Libri Tres* (1588) discussed the problem from a different perspective, drawing on the earlier scholastic thought on just war. Gentili was an Italian protestant refugee who settled in 1580 in England, fleeing from the intensifying activities of the inquisition which was part of the Counter-Reformation movement. He discussed the balance of

[204] Donald R Kelley, "Law," in *The Cambridge History of Political Thought, 1450-1700*, ed. James Henderson Burns and Mark Goldie (Great Britain: Cambridge University Press, 1994).
[205] Bodin, *The Six Bookes of a Commonweale*, 1606, 623.
[206] Bodin, 625.
[207] Bodin, 625.

power in relation to a just war, which he argued was warranted in case of a justifiable fear that some men could acquire 'too great power'.[208]

This reasoning on the grounds of fear was adopted from Guicciardini and represented a departure from the old scholastic way of thinking of just war as a way of 'avenging an injury'. Gentili sought to apply lessons from Italy to contemporary England which was threatened by Spain.[209] Although, as Richard Tuck pointed out, this view had origins in the texts of ancient orators such as Cicero, who implied that 'the violence of enemies did not actually have to be manifested in order to be legitimately opposed by violence'.[210] Gentili argued that there was no general rule of what the cause of fear might be, but a powerful argument that should be considered is that one 'should oppose powerful and ambitious chiefs. For they are content with no bounds, and end by attacking the fortunes of all'.[211] More specifically, what was at stake here was a defensive war against Turks and Spaniards who were, according to him, 'planning and plotting universal dominion'.[212] This was a matter of security, and as Koskenniemi pointed out, 'what would now count was fear not only of a forthcoming attack but fear that if present developments were allowed to continue, security would be lost'.[213]

Gentili made analogy of this kind of balance of power via defensive warfare with a distribution of molecules and atoms. He explains that 'the maintenance of union among the atoms is dependent upon their equal distribution; and on the fact that one molecule is not surpassed in any respect by another'.[214] The ideal order should therefore be seen as an even distribution of atoms and molecules. The metaphors from physics also feature in another chapter on the natural causes of war, in which he described the world in terms of 'strife of the atoms' that possess varying physical qualities, being 'heavy and light; cold and hot; moist and dry'.[215] This however did not mean that a discord necessarily led to 'conflict', as he further concluded that 'all this harmonious universe is formed of discordant elements'.[216] This understanding of universe is then constitutive of his understanding of the 'international', as he concludes that it is 'natural that men should disagree; and the result is wars'. [217]

[208] Alberico Gentili, *De Iure Belli Libri Tres*, trans. John C. Rolfe (London, Humphrey Milford: Oxford: The Clarendon Press, 1933), 65.
[209] Koskenniemi, *To the Uttermost Parts of the Earth*.
[210] Tuck, *The Rights of War and Peace*.
[211] Alberico Gentili, *De Iure Belli Libri Tres*, 64.
[212] Gentili, 64.
[213] Koskenniemi, *To the Uttermost Parts of the Earth*.
[214] Gentili, 65.
[215] Gentili, 53.
[216] Gentili, 53.
[217] Gentili, 53.

While seeing the world as a strife of atoms, Gentili rejected the notion that it is nature that made men go to war, as was typical for the humanist notion of war-like qualities of man. For him harmony could be present even among the 'discordant elements'. As he further elaborates, the distinction between friend and enemy was not made by nature, but rather by custom, which he considered to be the 'second nature'. For Gentili it was the acts and customs of humans and their likeness and unlikeness which 'cause harmony or discord'. It was therefore the inherent qualities of men as well as their habits and judgements which could produce an order. This harmony could be broken by a boundless desire of men that could not be satisfied by present glory and power, which he saw as a defect rather than the law of nature. And as he explained in the next chapter, it was through the defensive warfare that the boundless desires of others for a universal dominion that this 'defect' could be fixed. For him, even among the beasts, 'friendships and enmities come about […] in connexion with their food and manner of life; thus even the most ferocious of them live in harmony, and the savage lion himself, when well fed and free from hunger, is mild and gentle with his kind'.[218] It is therefore through an intervention by men that the balance could be restored.

Returning to the analogy of the atom and molecule, the idea of the unity of a body with the head is therefore replaced with a physics analogy of an atom, the existence of which is dependent upon the equal distribution of atoms and the relative 'sameness' of molecules. Gentili then brings in the oft repeated example of Guicciardini, of Lorenzo de' Medici, who in his words was 'wise man, friend of peace, and father of peace' and whose constant care was to maintain the 'balance of power among the princes of Italy'.[219] Connecting this to the issue of sovereignty, he argues that no one's sovereignty should grow so great 'that it is not permitted to call in question even his manifest injustice'. [220] However, for Gentili, this kind of balance is not to be maintained by neutrality of the greatest prince, for him 'force must be repelled and kept aloof by another force' and restoration of the balance was a matter of just war.[221]

Gentili discussed the possibility of arbitration which was considered to be one of the modes of contention. Unlike in Bodin, arbitration was not discussed in terms of restoring harmony or balance, but rather in the classical just war tradition of 'injury'. Gentili claimed that if the injury was caused by 'words', the differences should be settled the same way. Arbiters should make a just verdict and 'inflict a penalty they believe to be lawful'. [222] The legitimacy

[218] Gentili, 54.
[219] Gentili, 65.
[220] Gentili, 65.
[221] Gentili, 62.
[222] Gentili, 19.

of arbiter did not rest on the greatness of the prince but on their legal expertise. 'In the disputes of sovereigns more experienced judges can be secured and those who are less corruptible, who will hear and decide the cases with the whole world, as it were, for witnesses and spectators'.[223] The arbiter had to be someone whom both sovereigns voluntary accepted, as Gentili brought in the example of Spanish king refusing to submit his claims in the dispute with Portugal to the Pope who represented himself 'as if it were right peculiarly his own'.[224] The position of arbiter in Gentili's text was delegated to the legal experts rather than sovereigns with a higher ranking in the system.

Neutrality as a reason of state and interest

Another conceptual development of neutrality took place in the 17th century, when neutrality came to be considered in relation to the concepts of reason of state and the reason of interest. This trend was launched by Giovanni Botero's essay *Discourse on Neutrality*, published as a supplement to a later edition of *Della Ragione di Stato* (1601) and later developed in Philippe de Béthune's *The counsellor of estate* (1634). Prior to its publication in the counter-reformation context, "reason [and practice] of states" was introduced in Guicciardini's *Dialogue on the Government of Florence* in order to reject the scholastic interpretation of politics 'as a matter of Christian conscience'.[225] This term was then popularised and re-articulated with different intention in the 1580s in Giovanni Botero's *Ragione di Stato*, which was followed by many more publications on this topic. According to Koskenniemi, Botero's goal was to dethrone law 'as the supreme science of government, scientia civilis, and to introduce a new type of knowledge to help deal with a new type of object – the state – especially so as to help preserve and strengthen established Christian monarchies.[226] Law and legality were not in Botero's view principal social forces and people were 'rarely moved except by interest'.[227]

The reason of state was defined by Botero as 'knowledge of the means suitable to found, conserve, and expand dominion [state]'.[228] And as he added in a later edition of the work, it referred to those actions that could not 'be considered in light of ragione ordinaria', which could

[223] Gentili, 16.
[224] Gentili, 16.
[225] Koskenniemi, *To the Uttermost Parts of the Earth*.
[226] Giovanni Botero, *Botero: The Reason of State*, ed. Robert Bireley, 1st ed. (Cambridge University Press, 2017), 276, https://doi.org/10.1017/9781316493953.
[227] Koskenniemi, *To the Uttermost Parts of the Earth*, 276.
[228] Botero, *Botero*, 4.

be translated, according to Burke, not as an common or ordinary reason but rather as 'ordinary law'.[229] The concept of the reason of state introduced by Botero was however not limited to situations of exception, but encompassed both, ordinary government as well as actions in exceptional circumstances, Koskenniemi argued.[230] According to him, the term was deployed to explain political action which appeared immoral or contrary to divine law. Similarly, Noel Malcolm pointed out, 'when a ruler did something which was not virtuous or right (or not in accordance with his religious duties – for example, forming an alliance with heretics or infidels against-his coreligionists), but which was useful of profitable for his state, this was ascribed to 'ragion di stato''.[231] In the context of the Counter-Reformation, the goal was to reconcile the various immoral actions of the ruler with their overall moral program, such as using agents and spies for the sake of fostering mutual suspicion among the 'heretics'.[232]

His work being quickly translated into French, German, Spanish, and Latin led to an internationalization of this term as *raison d'état, razón de estado, ratio status*.[233] It became a central concept of political thought for about a hundred years, appearing in both theoretical works and practical memoranda, such as Cardinal Richelieu's *Testament politique* or Louis XIV *Mémoirs*.[234] The Machiavellian 'reason of prince' developed over the centuries from encompassing the concerns over safeguarding the prince and his rule, to advising rulers 'to adopt new knowledges and rationalities specifically for preserving the *state*'.[235] The reason of state became, according to Bartelson, an 'autonomous field of knowledge with its own domain of objects and its own rules of the formation of valid statements', becoming 'disconnected from the general theory of state, which it to an extent also absorbs and renders obsolete'.[236] Botero's work was also important for introducing a new concept of political community, defining the state as 'a firm rule over people'. The state became 'a separate institution, a system of rule', being defined as a type of power which disassociated it form 'the earlier adjective or personal connotations - *status regni, status Regis, status rei publicae, lo stato di' Medici, état de la république,* and so on'.[237]

[229] Peter Burke, "Tacitism, Scepticism, and Reason of State," in *The Cambridge History of Political Thought 145-1700*, ed. J. H. Burns and Mark Goldie (Cambridge University Press, 1991).
[230] Koskenniemi, *To the Uttermost Parts of the Earth*.
[231] Noel Malcolm, *Reason of State, Propaganda and the Thirty Years' War. An Unknown Translation by Thomas Hobbes* (Oxford University Press, 2007).
[232] Malcolm.
[233] Burke, "Tacitism, Scepticism, and Reason of State."
[234] Burke.
[235] Richard Devetak, "Reason of State in European International Thought," in *Perspectives on International Political Theory in Europe*, ed. Vassilios Paipais (Cham: Springer International Publishing, 2021), 35, https://doi.org/10.1007/978-3-030-77274-1.
[236] Bartelson, *A Genealogy of Sovereignty*, 156.
[237] Koskenniemi, *To the Uttermost Parts of the Earth*, 274.

Botero began *The Discourse on Neutrality* with a statement that neutrality is one of the most difficult subjects in the field of government, as this matter directly depended on the 'traits of the princes and their states', which he found difficult to discuss in general terms. [238] Princes, he stated, were by nature constituted in a way that they do not form friendships and enmities in an absolute sense, but rather seek them, according to what suits them. Botero introduced the term reason of interest which determined whether princes form friendship or enmity. He compared reasoning according to interest to a cooking process: 'as some foods by their natures are unsavory, and receive relish from the preparation which the cook gives them; so they, being of themselves without affection, accordingly incline to this side, or to that as their interests reconcile their understanding and affections'.[239] Neutrality then was conceptualised as a departure from one's 'nature' which was to be decided by the reason of state that allowed the conceptualization of the dynamics of decision-making according outside of the Galenic theory of humours. The reason of interest was thus akin to what Gentili discussed as the second nature. While for Gentili these were customs of princes, for Botero different natures were reconciled through reason of interest, encompassing the different knowledges and rationalities of government. He concluded with the well-known phrase that the reason of state is after all 'little else than reasoning from interest'.[240]

The concept of interest was not new and it could be found in earlier vocabularies, what however changed during this period was its meaning and importance, noted Bartelson, as it turned into a 'fundamental principle of political analysis'.[241] As he wrote: 'It should be taken for certain that in the decisions made by prince's interest will always override every other argument; and therefore he who treats with princes should put no trust in friendship, kinship, treaty nor any other tie which has no basis in interest'.[242] Concerns over utility and profit were increasingly encapsulated in this concept, which would long outlive the 'reason of state' and become an essential part of political vocabulary.[243]

Botero, like others, discussed advantages and disadvantages of neutrality, or rather the good and bad 'features' of neutrality. The discussion of the good features of the neutral drew on Bodin's conceptualization of neutral as a judge and arbiter, while also adding a temporal

[238] Giovanni Botero, *Practical Politics, by Giovanni Botero; Translated from the Italian, Turin, 1596, Edition of Gio, Dominico Tarino and Other Editions; with the Essays (Aggiunte) on Neutrality and Reputation. Religion and the Virtues of the Christian Prince, against Machiavelli (Abridged) by Pedro Ribadeneyra; Translated from the Spanish, Madrid, 1601, Edition of Luis Sanchez. Translated and Edited by George Albert Moore*, trans. Dominico Gio Tarino (Chevy Chase, Md., Country Dollar Press, 1949), 223.
[239] Botero, 223.
[240] Botero, 223.
[241] Malcolm, *Reason of State, Propaganda and the Thirty Years' War. An Unknown Translation by Thomas Hobbes*, 94.
[242] Botero, *Botero*, 41.
[243] Malcolm, *Reason of State, Propaganda and the Thirty Years' War. An Unknown Translation by Thomas Hobbes*.

dimension to the concept. Neutral was 'honored and respected by both the parties through the fear that each has that he would ally himself to the opponent. He remained, as it were, the arbiter of the differences of the others and master of himself'.[244] This also entailed a temporal advantage as neutrality for Botero was a way of suspending the time to make a judgment. As he stated: 'he enjoys the present (in which way the French have well carried on their affairs), and he avails himself of time (takes his time); he who has time (which is the bringer of best counsels) has (as is wont be said) life'.[245] Rather than a common friend as Bodin would call him, the neutral was defined as 'living' without an open enemy, causing no offence to anyone.[246] This was related to the perception of uncertainty in the matters of government as well as the 'outside' where the contingencies of war lead to a condition of uncertainty in which one needs to acquire security. As he explains: 'since the outcome of declaration is doubtful, because there is nothing so uncertain as the outcome of war […] there is no reason here for which the prince of whom we are talking should secure himself more than by declaration than by neutrality'.[247] Security then is acquired through removing the uncertainty of politics.

Therefore, for 'small' princes, Botero argued, neutrality in general was a better option than aligning with one of the parties because, while it might be very displeasing to both parties, it does not offend or damage them. The one who declared neutrality did so out of fear for both, rather than out of spite, and therefore, is not of service or causing injury to either one of them. Contrary to his Italian predecessors Guicciardini and Machiavelli, Botero argued that neutrality for weaker, or in his terminology smaller princes, was more advantageous than taking part in the conflict. Even in an environment of fear, neutrality is seen as a more advantageous option, although this is limited to interactions with the Christian princes possessing specific qualities. In his understanding of the 'international' the relative positions of power vis-à-vis each other were not the only factors accounting for alliances or neutrality. As he argued, 'the neighbors who are at war would be princes not completely inhuman, barbarous and enemies of good name and of honor'.[248] However not everyone possessed these honorable and humane qualities that would ensure the respect for the rules, according to Botero. He drew a line between princes of humanity and religion and the barbarians in another paragraph.

[244] Botero, *Practical Politics, by Giovanni Botero; Translated from the Italian, Turin, 1596, Edition of Gio, Dominico Tarino and Other Editions; with the Essays (Aggiunte) on Neutrality and Reputation. Religion and the Virtues of the Christian Prince, against Machiavelli (Abridged) by Pedro Ribadeneyra; Translated from the Spanish, Madrid, 1601, Edition of Luis Sanchez. Translated and Edited by George Albert Moore*, 223–24.
[245] Botero, 224.
[246] Botero, 223–334.
[247] Botero, 225.
[248] Botero, 225.

Neutrality was constitutive of the international defined by princes who were humane, religious, respectful of good name and honour with some sort of higher purpose. This was defined against barbarians who could not be relied upon by both their allies and neutrals, and whose only purpose was limited to achieving greatness and power. The international was thus defined by those who could set limits upon their empire and those who could not. For Botero, nature and God played the function of maintaining order, as they set the limit on pursuit of empire, beyond which 'they have to return back as do the waves'.[249] It is only the barbarians such as Turks who lacked higher purpose and threatened others with dominion as he further discussed in the example of the decision of Lord Sigmund Bathory, the Prince of Transylvania. Bathory being in between the empire of the Turks and the House of Austria, allied himself with the House of Austria and was praised by Botero for governing himself with 'human prudence' and displaying 'a marvelous zeal for the Catholic faith and of service to God; and for this zeal he has already received the very great reward of an immortal name'.[250] The prudence governed by Catholic faith thus to put limits upon his empire.

Following the publication of Botero's *Reason of state* a dichotomy between a 'true' or 'good' and 'false' or 'devilish' reason of state was established in the subsequent decades within the literature on this topic. The true reason of state being 'limited by justice, piety, the law of God, and so one, while false reason of state condones the breach of treaties and even political assassination'.[251]

In the 17th century, writers started to distinguish between neutrality as a matter of reason of state/interest and neutrality established through treaty making. For instance, Philippe de Béthune, who served as a diplomat and ambassador to the kings of France and was a brother of the famous Duc de Sully, discussed this in his work *The counsellor of estate,* written during the Thirty Years War. Synthesizing the ideas of Bodin and Botero, Philippe discussed neutrality in a chapter titled *Of Treaties of Neutrality* and differentiates between two types of neutrality – one which is regulated by the rules established through a treaty, a neutrality with alliance of either part and one which is without an alliance and governed by no treaty rules. It was the second type of neutrality, that could have been according to him properly called neutrality that he focused on. In this case, a neuter prince had no ties to either party and neutrality was defined

[249] Anthony Pagden, *Lords of All the World. Ideologies of Empire in Spain, Britian and France c. 1500- c. 1800* (Yale University Press, 1995), 107.
[250] Botero, *Practical Politics, by Giovanni Botero; Translated from the Italian, Turin, 1596, Edition of Gio, Dominico Tarino and Other Editions; with the Essays (Aggiunte) on Neutrality and Reputation. Religion and the Virtues of the Christian Prince, against Machiavelli (Abridged) by Pedro Ribadeneyra; Translated from the Spanish, Madrid, 1601, Edition of Luis Sanchez. Translated and Edited by George Albert Moore*, 226.
[251] Burke, "Tacitism, Scepticism, and Reason of State."

by 'the discretion of the neuter Prince' who was not to show himself to be inclined to one party more than the other. He thus distinguished between neutrality as a matter of positive law established and governed by treaty making, and neutrality as a reason of interest, in which he was mainly interested.[252] Neutrality as a matter of positive law would be in the course of the 17th and 18th century then grounded in the natural law of nations, and rearticulated into a legal form associated with rights and duties.

Neutrality however was not seen as a security mechanism providing an order as was the case with Bodin. In fact, neutrality was to be abandoned for the sake of the balance of power by joining an alliance, and this kind of balancing was considered as a mechanism for the security of all. He argues that if the *Neuter* is to declare himself due to the necessity of circumstances,

> he must doe it for the most powerfull of the two parties, following the Councell of Romane; that eyther he must make himselfe the strongest, or bee a friend to the strongest: Unless hee saw that ioyning to the weaker, hee might balance the power of the stronger, and by this counterpeze reduce them to reason. The safety of Estates consisting chiefly in an equall counterpeze of power in the one and the other, and the greatnesse of a Prince drawing after it the ruine of his Neighbours; it is wisedome to prevent.[253]

The balance of power for the sake of security which was to be achieved through alliances on a systemic level is one of the three types of balancing that Philippe identified which included also balance of business and balance of interests.[254]

The distinction between neutrality as a matter of treaties and neutrality as a matter of reason of state that Phillipe de Béthune made was symptomatic of the developments of the 17th century when the law started to gain prominence, leading to redefinition of neutrality through the natural law of nations, which will be discussed in the next chapter. The link between neutrality and the reason of interest never disappeared and this articulation of neutrality continued to appear well into the 18th century, despite the extensive number of legal conceptualizations of neutrality in the natural law of nations. The accusations of neutrals following only their own self-interests continued to be levelled against them in disputes over their rights. The ethico-normative form

[252] Philippe de Béthune, *The Counsellor of Estate Contayning the Greates and Most Remarkeable Considerations Seruing for the Managing of Publicke Affaires. Diuided into Three Parts. The First Contaynes the Meanes to Settle an Estate. The Secund, the Meanes to Perserue It. And the Third, the Meanes to Encrease It. Written in French by One of the Ancient Counsellors to the Most Christian Kings, Henry the Fourth, and Levvis the Thirteenth. Translated by E.G.*, trans. Edward Grimeston (Nicholas Oakes, 1634), http://name.umdl.umich.edu/A09487.0001.001.
[253] Béthune, 220.
[254] Béthune, *The Counsellor of Estate Contayning the Greates and Most Remarkeable Considerations Seruing for the Managing of Publicke Affaires.*

of neutrality conceptualised into existence during this period by Bodin was crucial to taming the reason of interest and the emergence of neutrality in its legal form within the framework of natural law of nations.

3. Sailing for the Rights. Neutrality and the Natural Law of Nations

Following the Thirty Years War, discussions of neutrality also moved into the legal sphere as European sovereigns sought to define relations with each other on the basis of rights and obligations that would guide their conduct within the 'international' space and limit the way states could pursue their interests. What emerged was a legal form of neutrality defining their rights and duties during war, the scope of which was subject to contestation. This was intended to provide a limit to the logic of the 'reason of state', thus curbing the scale of violence and protecting the trade taking place on the sea. With the increased rivalry between European commercial empires and their overseas expansion, it was necessary to extend neutrality from the person of the sovereign to encompass different spaces and objects of trade. The new categories of neutral territories, ports, ships, and goods began to be used in order to eliminate warfare from spaces and objects of trade, as trade became the new measure of power and greatness as the European monarchies transformed themselves into commercial empires. In the discursive struggle of the eighteenth century, the competing representations of neutrals as self-interested actors protracting wars was pitched against the claims of neutral rights grounded in the natural law of nations. The struggle over the rights of neutrals culminated into establishment of a political form of neutrality with the creation of the League of Armed Neutrality under the initiative of Catherine the Great, which gave it an institutional expression. The ethico-normative form of neutrality was redefined in the natural law of nations and institutionalised as the Russian empress offered her good offices of mediation.

Natural Law of Nations 2.0

Over the course of the eighteenth and nineteenth centuries thinkers began to imagine 'Europe as a system, a 'state system' worthy of analysis in its own right, rather than simply the product of actions by states and statesmen'.[255] The 'international' at the centre of which was Europe, became a subject of analysis. [256] As European overseas expansion boomed, neutrality was re-defined to accommodate the new ways of cooperation and conflicts that now took place in the

[255] Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, Massachusetts: Harvard University Press, 2018), 10.
[256] Pitts, 10.

context of the sea, through a new version of natural law. The natural law of nations or *ius gentium et naturae* emerged as an alternative way of thinking and theorizing the 'outside' that assumed a level of unity or connection between European nations outside of Christian religion that was previously the source of bloody conflict, and also allowed for the incorporation of the non-European world into the Europe-cantered order. As Schmitt pointed out, the natural law of nations was very much tied to 'the appearance of vast free spaces and the land appropriation of a new world'.[257] From the seventeenth century on, European jurists began discussing rights and obligations concerning neutrality, as an alternative to the earlier articulation of neutrality as a reason of state/interest that would work outside of the context of the balance of power of European soil. These changing articulations of neutrality and the emerging legal architecture were embedded and negotiated in the context of colonial encounters and new commercial practices associated with overseas discoveries, from which many of the interstate conflicts stemmed.

With the gradual de-theologisation of war, a new relation between the legal concepts of war and neutrality emerged as conflicts among European powers moved onto the sea. De-theologisation of war, as Schmitt pointed was possible only after the creedal disputes, which in the 16th and 17th centuries had justified some of the worst atrocities, were overcome. This, together with the 'land-appropriation' of the New World led to the 'humanization and rationalization of wars, i.e. the possibility of bracketing war in international law'.[258] As many concepts, including war, were developed and re-defined in the natural law of nations jurisprudence, so was neutrality.

Initially, the *ius gentium et naturae* was still very much tied to the Catholic Christian doctrines as it emerged in counter-reformation Spain within the neo-scholastic School of Salamanca. It provided a legal basis for the overseas expansion that would legitimise conquest, colonization, and property acquisition within the conceptual framework of the dogmatic assumptions of theology in terms of God's *potestas* or post-lapsarian anthropology.[259] How to fit these practices into Catholic theological imperatives in the counter-reformation Spain became a major concern, as the conquest of the 'Indies' brought together imperatives of evangelization and enrichment, which were hard to reconcile with the old theological

[257] Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York: Telos Press, 2003).
[258] Schmitt.
[259] Kirstin Bunge, "Francisco de Vitoria. A Redesign of Global Order on the Threshold of the Middle Ages to Modern Times," in *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, ed. Stefan Kadelbach, Thomas Kleinlein, and David Roth-Isigkeit, First edition, The History and Theory of International Law (New York, NY: Oxford University Press, 2017).

categories.[260] The concern over how the behaviour of Europeans could potentially jeopardise the prospect of the eternal life was of great importance.[261] Natural law, was originally a stoic term referring to a body of self-evident rules, governed human actions regardless of their beliefs and local customs. It was later on redefined by Aquinas to refer to 'a faculty which allows humans to distinguish what was just and right from what was not'.[262] This authoritative understanding of natural law was then subject to re-articulations and extensions by neo-Thomists and understood as a sort of a 'bridge between purely human and the divine'.[263] The Salamanca scholars put this natural law at the centre of their reflections regarding the relation of man to the theos.[264]

The origins of natural law were, according to the Salamanca scholars, in God's creation but were rendered largely inapplicable and thus in need of being modified or supplemented by a different law which would bring together the essential goal of supernatural *felicitas* with secular notions of happiness. *Ius gentium*, or the law of nations, would then guide Christians in determining the social institutions they should establish for this purpose - *dominium iurisdictionis* and *dominium proprietatis,* or civil power and private ownership, being among those with most importance.[265] As Koskenniemi pointed out, according to the Salamanca scholars 'the right principles of jurisdiction, ownership and warfare could be found through the employment of reason and it was equally applicable to Christians and unbelievers. The light of reason itself was from God'.[266] The role of theology was to supplement the law for the sake of achieving supranational happiness and the jurisdiction of theologians would thus overlap with that of jurists. Being members of the country's intelligentsia, they were consulted on a regular basis by courts, held positions in different governmental bodies, and were engaged in political debates on controversial topics.[267] While the authority of theology was presumed in even the most Realpolitik analyses, there was a tendency to look for a middle ground which was offered through the ambivalence of character of *ius gentium* (was it a positive or natural law?).[268]

[260] Koskenniemi, *To the Uttermost Parts of the Earth*.
[261] Peter Schröder, "Vitoria, Gentili, Bodin: Sovereignty and the Law of Nations," in *The Roman Foundations of the Law of Nations*, ed. Benedict Kingsbury and Benjamin Straumann (Oxford University Press, 2010), https://doi.org/10.1093/acprof:oso/9780199599875.001.0001.
[262] Anthony Pagden, "Gentili, Vitoria, and the Fabrication of a 'Natural Law of Nations,'" in *The Roman Foundations of the Law of Nations*, ed. Benedict Kingsbury and Benjamin Straumann (Oxford University Press, 2010), 347, https://doi.org/10.1093/acprof:oso/9780199599875.001.0001.
[263] Pagden, 347.
[264] Pagden.
[265] Koskenniemi, *To the Uttermost Parts of the Earth*.
[266] Koskenniemi, 132.
[267] Koskenniemi.
[268] Koskenniemi.

The Salamanca scholars did not have much to say about neutrality as their ideas of war (between the states) were embedded within a notion of the just war, which although then used to justify the conquest of the new world, did not allow for two equally positioned enemies. Just war was still conceived as a means of punishment and Francisco de Vitoria would argue that 'the sole and only just cause for waging war is when harm has been inflicted', although 'not every or any injury gives sufficient grounds for waging war'.[269] There could be only one 'just' belligerent whose attack was morally legitimate, and the opponent was deemed as a criminal.[270] The actions of just belligerent could be limited only by a rules. According to Vitoria, 'a prince who fights a just war becomes a judge of the enemy'.[271]

Before making its way to discussions about overseas expansion, the concept of neutrality in legal texts was initially discussed in the context of European wars and drew on the humanistic discussions of that time. One of the first to do so was Batlhazar Ayala who was famous for introducing new criteria for just war based on the way it was declared and waged, and its conformity to certain formal principles, regardless of whether the cause was 'just'.[272] When it came to the 'outside' affairs of the king and princes, Aayala however did not discuss neutrality in terms of the rules of war but merely rearticulated Machiavelli's views. Being neutral was 'not always the safest course' and the role of the neutral was reduced to that of a 'mere spectator', thus assigning him a passive status.[273] Bringing in examples from Livy, he illustrated this with the Romans seeking the friendship of the Acheans. In his speech to the people, the Achean praetor said that Romans must be treated either as allies or as enemies, rejecting the 'middle path' which would secure neither friends nor enemies.[274] Neutrality was thus discussed only as an advice for the ruler on how to preserve his 'state', with the strategic meaning being still dominant.

The negative opinion of neutrality was also retained in Ayala's discussion of the civil wars. This can be explained by the fact that he was a fervent Roman Catholic, loyal to the Spanish kingdom, and served as a legal advisor to the leader of the Spanish army during the rebellion in the Netherlands. He argued that when a sedition took place and people were divided into two antagonistic factions, the ancient Law of Solon ought to be followed and 'any one

[269] Francisco de Vitoria, *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance, 1st ed. (Cambridge University Press, 1991), 303–4, https://doi.org/10.1017/CBO9780511840944.
[270] Claire Vergerio, *War, States, and International Order: Alberico Gentili and the Foundational Myth of the Laws of War*, 1st ed. (Cambridge University Press, 2022), https://doi.org/10.1017/9781009105712.
[271] Vitoria, *Vitoria*, 283.
[272] Vergerio, *War, States, and International Order*.
[273] Balthazar Ayala, "Three Books on the Law of War and on the Duties Connected with War and And on Military Discipline," trans. John Pawley (The Carnegie Institution of Washington, 1912), 14.
[274] Ayala, 14.

who stood neutral should be deprived of home and fatherland and fortune and be banished from the country, an exile'.[275] Peace could not be established by one being neutral but by joining the morally superior side. The law of Solon would compel 'good citizens' to join forces against the faction of 'bad citizens', and in this way, they would not only save themselves but also the 'state'. Everyone therefore ought to join the faction of 'good citizens' that would bring about peace, he argued. Defending the interests of the Habsburgs, Ayala would not classify a rebellion or civil war as a war proper which meant that rebels could not fall under the legal category of enemies, who could then be seen as sovereigns. As he argued, 'the two [categories were] quite distinct, and so it is more correct to term the armed contention with rebel subjects execution of legal process, or prosecution, and not war'.[276] The rebels in this conflict would be treated as 'mere criminals, against whom all the means of war – and more – could be unleashed'.[277] Ayala was inspired by Bodin, and his arguments about whether legality or justness of a war rested on the condition that it was 'declared and undertaking under the authority of a sovereign prince,' making the Habsburgs and other monarchies the only possible legitimate actors of war.[278]

This negative view of neutrality in civil wars was not universally shared, however. For instance, theologian Pierre Charron in his counter-reformation work *Les Trois Vérités or Of wisdome three books* (1593), considered the situation of doubt when it was not so easy to establish who had the just cause of war (which had existed within the Thomistic tradition). These, he claimed, were situations of great difficulty when one ought to consider other things than justice and equity of the parts, although no specifics were provided as to what these could be. Neutrality was thus possible when war was not considered merely from the point of view of justice, when the default choice was between good and bad factions, as Ayala argued. In this case, both positions, taking part in or remaining neutral in civil wars, were acceptable for Charron and he proceeded to lay down the rules of behaviour of neutrals which were to be determined by counsels and 'rule of moderation'- modesty and prudence after the example of Atticus. Neutrals must be "common in their actions, offensive to none, officious and gracious to all, complaining of the common infelicitie".[279] They therefore never lose friends or gain enemies, being fit to be 'mediatours and loving arbitratours'.[280] To be honest and fair neutral

[275] Ayala, 14.
[276] Ayala, 14.
[277] Vergerio, *War, States, and International Order*, 108.
[278] Vergerio, 106.
[279] Charron Pierre, *Of Wisdome Three Bookes Written in French (1593) by Peter Charro[n] Doctr of Lawe in Paris*, trans. Leonard Samson (London: Eliot's Court Press for Edward Blount & Will: Aspley, 1633), 419.
[280] Pierre, 419.

required the consent of both parties, and neutral had to be a friend of both. The early legal articulations of neutrality thus still drew heavily on the earlier humanistic conceptions of neutrality and prudential recommendations for how rulers assuming a position of neutrality should conduct themselves. There was no firm structure in place yet through which the rules common for all would be derived from outside of religious unity and which would remove the practice of neutrality as a subject of contingency.

Limiting interests via rights and duties

The important starting point for a new articulation of neutrality that many jurists within the natural law of nations tradition of the 17th and 18th century drew on was Hugo Grotius' famous treatise *De Iure Belli ac Pacis* first published in 1625, in which neutrality was for the first time associated with certain rights and obligations during war. Although Grotius did not use the term *neuter/neutralitas* and instead introduced the term *medii* (or 'medius' in singular) to describe those 'who have nothing to do with war', these two terms were used interchangeably by the authors drawing on these texts. This can be observed in the 1655 English edition of this work by Clement Barksdale, which translated the chapter title discussing the role of *medii* as *Of Neuters in War. How they are to be used; and, how to behave themselves*. These two categories were from then on often used interchangeably or discussed together.[281]

Before discussing Grotius' ideas of neutrality in relation to war from the legal perspective, it is necessary to mention that this conceptual development was conditional upon the discursive work done not only by Ayala but also Gentili who famously argued that war is 'nothing but a duel between moral equals stuck in a condition devoid of common authority' and this philosophy of war is shared by the 'great community formed by the entire world and the whole human race'.[282] In Gentili's theory of the natural law of nations, contrary to Vitoria and other scholasticists, war could take place only between two sovereigns who were legally equal and the term *hostis* was used to designate the public person to whom the laws of war applied.[283] That justice could lie with both parties also meant that 'war has its origin in necessity; and this necessity arises because there cannot be judicial processes between supreme

[281] Hugo Grotius, *The Illustrious Hugo Grotius Of the Law of Warre and Peace with Annotations, III Parts, and Memorials of the Author's Life and Death.*, trans. Clement Barksdale (London: Printed by T. Warren, for William Lee, 1655), http://name.umdl.umich.edu/A42234.0001.001.
[282] Jens Bartelson, *War in International Thought*, 1st ed. (Cambridge University Press, 2017), 138, https://doi.org/10.1017/9781108297707.
[283] Bartelson, *War in International Thought*.

sovereigns or free peoples unless they themselves consent, since they acknowledge no judge or superior'.[284] This definition also implied that theologians would, in his understanding, no longer hold influence in determining the just cause as was the case with the Spanish neo-Scholastics. This paved the way for an understanding of neutrality and its associated rights and duties within the natural law of nations in which belligerents and neutrals held legally equal position.

The Renaissance categories of reason and interest in which neutrality was defined by earlier thinkers were rearticulated within this legal framework to put limits on what was perceived as a corrupt Machiavellian political morality of statecraft. As Istvan Hont put it, the 'natural jurisprudence of this early posthumanist kind […] protected reason of state from its corrupted variants by affirming the equal right to self-preservation of all. These rights provided a safety net for individuals against the degeneration of politics into an ultraskeptical exercise of pure might'.[285] Grotius' innovation was, he argued, to raise the dam from inside of the idiom itself, rather than resorting to some theological or moral theory generated externally.[286] What was at stake now was not just the interest of princes and kings but also the interest of the society of states as a whole.

Interests were not something that individual princes had to balance but rather something that would be protected and guaranteed through a system of rights and duties, embedded within the law of nations. As Grotius stated in the prolegomena of his text, 'amongst all or most States there might be, and in Fact there are, some Laws agreed on by common Consent, which respect the Advantage not of one Body in particular, but of all in general. And this is what is called the Law of Nations'.[287] Law of nations was for Grotius a product of a consent of states that have agreed to respect the interest and profit of everyone as a whole, with natural law putting a limit to the conduct of how states could pursue their interests and how they reasoned.

Grotius departed from the Catholic/scholastic understanding of *ius gentium* as god's command, instead rearticulating it as God's reason in which the whole of humankind participated. Natural law thus originated from the 'essential universal reason, common to all men'.[288] Reason combined with natural law would provide limits to the violence done against

[284] Bartelson, 139.
[285] István Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective*, 1. Harvard Univ. Pr. paperback ed (Cambridge, Massachusetts, and London, England: The Belknap press of Harvard University Press, 2010).
[286] Hont.
[287] Thor Inge Rørvik, "The Law of Nations at the Naval Academy in Copenhagen around 1800: The Lectures of Christian Krohg," in *The Law of Nations and Natural Law 1625–1800*, ed. Simone Zurbuchen (BRILL, 2019), 63, https://doi.org/10.1163/9789004384200_005.
[288] Cornelia Navari, *The International Society Tradition: From Hugo Grotius to Hedley Bull* (Cham: Springer International Publishing, 2021), 16, https://doi.org/10.1007/978-3-030-77018-1.

individual rights. For Grotius 'Right Reason, and the Nature of Society […] does not prohibit all Manner of violence, but only that which is repugnant to Society, that is what invades another's Right. For the Design of Society is, that every one should quietly enjoy his own, with the Help and the united Force of the whole Community'.[289] Reason was then redefined as the inclination of humans to act 'according to some general principles' which limits the agency of states and the contingency of their decisions, and allows one to conceptualise states' duties towards each other without relying on religious unity, as was the case with Botero. The obligatory status of *ius gentium* was not derived directly from the natural law as was the case with the neo-Scholastics of the Salamanca school.[290] Being derived from natural law would make its legal and obligatory character open to disputes, since its reading was open to contestation and was the prerogative of theologians. The obligatory status was instead derived from the *societas gentium* with its tangible expression taking the form of pacts and alliances with 'a force of its own, amenable to judgement – a judgement in terms of the *societas gentium* and its requirements'.[291]

This new conceptualization of obligation was also reflected in the relations between *medii* or neutrals in terms of prescribing their behaviour in the 'wars of others' as well as their property rights which could have been affected as a result of the war of others. Grotius begins by stating that it might seem unnecessary to discuss neutrals, referring to them as those 'who have nothing to do with War'.[292] While there is 'no right of War over these' they still might be affected by the events of war, he argues, and this is especially for those he calls 'borderers'.[293] The term borderers, suggested the importance of spatial relation of neutrals towards the conflicting sides, meaning that their obligations in the conflict became relevant due to their territorial proximity to the conflict. The actions of neutrals were thus no longer to be dictated by princes' and kings' regards for preservation and expansion of state but rather by their geographical position. Neutrals were seen as those affected by the war by virtue of bordering states at war but being not directly involved. Their rights in this case being not very clearly defined. The spatial characteristic of the concept would be even more important and pronounced in the discussions over the rights and duties of neutrals on the sea.

[289] Koskenniemi, *To the Uttermost Parts of the Earth*, 283–84.
[290] Navari, *The International Society Tradition*.
[291] Navari, 19.
[292] Grotius, *The Illustrious Hugo Grotius Of the Law of Warre and Peace with Annotations, III Parts, and Memorials of the Author's Life and Death.*, 645.
[293] Grotius, *The Illustrious Hugo Grotius Of the Law of Warre and Peace with Annotations, III Parts, and Memorials of the Author's Life and Death.* , 645.

Like with Ayala, neutrality was defined against the concept of just war. Although it needs to be noted that the language of just war continued to be present until the 19th century in most legal treatises that discussed the laws of war, and therefore the obligations of neutrals were introduced in consideration of whether the war was just, unjust, or the cause was unclear. Grotius' references to *justa causa*, Schmitt noted, were due to 'propagandistic reasons' and because no higher instance was established during this period and 'every belligerent sovereign had the same right to prisoners and to plunder'.[294] Furthermore all European wars between 'states' were treated by jurists from Grotius to Vattel, even when considered unjust wars as a real wars *de jure gentium*. [295] In line with this, Grotius stated that in in the case of unjust war, neutrals are to avoid strengthening the one maintaining a bad cause, and should avoid conduct hindering the actions of those maintaining the just cause. Given that practically every sovereign by this time claimed that their war was just, the most relevant was his point about the 'doubtful case', when impartiality was necessary. In this situation, neutrals should 'shew themselves equal to both, in permitting passage, in affording provision for the Legions, in not relieving the besieged'.[296] Again the geographical aspect of neutrality came into play with the obligations of neutrals being determined by openness of their territory for crossing to both belligerent parties, suggesting the importance of the in-between geographical position for determining the meaning of the concept. The matter of supplies for belligerents which Grotius left rather vague and thus subject to political decisions, would later be a very much contested issue in the discussions of freedom of trade of neutrals.

The rights of neutrals were briefly discussed only in relation to their property which could be affected as a result of the war of 'others'. In his brief discussion of neutral's property, Grotius emphasised that it is only the condition of extreme necessity that 'may give a right over what belongs to another man'.[297] Furthermore, the owner himself cannot be in an equal necessity as the other, and should the necessity arise, one should not take more than is necessary. This condition of necessity however left space for what Istvan Hont called the 'politics of necessity based on the principle of *necessitas non habet legem,* necessity has no law'… which implied a situation with 'a total disregard of the rules of morality, justice, and positive law in order to deflect mortal danger to their country'.[298] In other words, by including this condition of extreme necessity Grotius allowed for a degree of contingency and for princes

[294] Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*.
[295] Schmitt.
[296] Grotius, *The Illustrious Hugo Grotius Of the Law of Warre and Peace with Annotations, III Parts, and Memorials of the Author's Life and Death.*, 650.
[297] Grotius, 645.
[298] Hont, *Jealousy of Trade*, 11.

to make judgements, regardless of the laws of nations, whether to take possession of a neutral's property, with extreme necessity being the limit of the law's validity.

Unlike the strategic conception of neutrality, the legal conception of neutrality implied a two-way relationship, and as Johan Wolfgang Textor emphasised in his work published in 1680, it was a position set by agreement and could not exist apart from it. The agreement 'regularised' the position of *medius* and the legal position of neutrality thus referred to 'the right of equal friendship which each or all belligerents'.[299] At this stage though, even what Textor called the 'absolute' neutrality which was supposed to treat belligerents on equal footing, could allow for an exception to this legal status if there was a prior obligation established. This was also noted by Stephen Neff who pointed out that the exclusive status of neutrality was established only in the 19th century.[300]

The Sea and the Question of Dominium

The most intense discussions over the rights and duties of neutrals took place in the context of overseas expansion of European states and as the disputes over free trade which unfolded in the backdrop of the claims of sovereignty over the whole world by the Spanish and Portuguese empires. The concern over the property of neutrals that Grotius introduced stemmed from a broader concern over property or *dominium* of European powers in the context of trade and imperialism, and the conflicts that arose as a result of this. With the developments made in shipbuilding, cartography and instruments of navigation, a new-world view emerged as a result of mapping of the globe, with seas and oceans becoming bridges for increasing interaction between various polities. The polities thus becoming linked via dense nets of cultural and commercial exchanges.[301] The sea became a political space where land acquisitions could be made in future.[302] A new language for how this imperial expansion was to be done was to be invented and these conceptual developments presupposed the articulation of neutrality as a right of free trade.

An important starting point for the shift in the understanding of acquiring dominium is the Spanish and Portuguese dispute over American territories at the end of fifteenth century

[299] Johann Wolfgang Textor, *Synopsis of the Law of Nations*, trans. John Pawley Bate, vol. 2 (Washington, D.C.: Carnegie Institution of Washington, 1916), 273.
[300] Stephen C. Neff, *The Rights and Duties of Neutrals: A General History* (Manchester University Press, 2000).
[301] Valentina Vadi, *War and Peace. Alberico Gentili and the Early Modern Law of Nations* (BRILL, 2020).
[302] Mark Shirk, "Boundaries in the Sea," in *The Sea and International Relations*, ed. Benjamin de Carvalho and Halvard Leira (Manchester: Manchester University Press, 2022).

which was settled at that time by the Pope through the language of donation. The five Bulls of 1493 that were issued by the Pope Alexander IV, and closely tied to the Treaty of Tordesillas of 1494, aimed to limit the rivalry between the Castilian and Portuguese crowns, while allowing Ferdinand and Isabella to occupy a region ambiguously defined as 'such island and lands […] as you have discovered or are about to discover'.[303] Furthermore, although the bulls and the Treaty of Tordesillas refer to 'territories, the separating line is drawn on the ocean, so that this may be seen as an early and most ambitious claim to sovereignty over the sea'.[304] The legitimacy of the claims of Castilian crown over the American possessions and sea were thus initially based on a papal grant, and until the late eighteenth century within the historiography of Spanish empire these bulls were referred to as a donation, an analogy to the Donation of Constantine.[305] Donation, or gift was the default medieval way of acquiring property. In medieval natural law, 'God [was] the fount[ain] of creation and of all mastery (dominus)', thus being also a 'source of all property (dominium)'.[306] There was no language of subjective 'rights' in medieval law and this shift came later on with Grotius and other 'natural law' theorists.[307]

This papal donation to Spain and Portugal, Pagden argued, while not granting undisputed dominium over America to the Spanish, still provided a link to claims of the sovereignty over 'all the world'. During the great overseas expansion, the Spanish sovereign held the title of Holy Roman Emperor and was committed to the program of evangelization in the newly discovered territories.[308] The Treaty of Tordesillas split the territories outside Europe between Spain and Portugal, with Spain becoming the preponderant power in the Americas and Portugal establishing trading posts in the East Indies, South America, Africa, and China. Following the union of the Portuguese and Spanish crowns under the rule of Philip II (1527-1598), the Iberians laid claim to a jurisdiction encompassing almost the entire world.[309] Those seeking to cross these lines without the permission of the Spanish and Portuguese crowns were treated as 'criminal intruders, no different from pirates'.[310] This line however was contested and never acknowledged by other European powers and the different contestations of this line were primarily a matter of de-limiting the rights of movement and future conquest. [311]

[303] Pagden, *Lords of All the World. Ideologies of Empire in Spain, Britian and France c. 1500- c. 1800*.
[304] Tullio Treves, "Historical Development of the Law of the Sea," in *The Oxford Handbook of the Law of the Sea*, ed. Donald Rothwell et al., 1st ed. (Oxford University Press, 2016), 3, https://doi.org/10.1093/law/9780198715481.003.0001.
[305] Pagden, *Lords of All the World. Ideologies of Empire in Spain, Britian and France c. 1500- c. 1800*.
[306] Epstein, *Birth of the State*, 181.
[307] Epstein, *Birth of the State*.
[308] Epstein, 181.
[309] Vadi, *War and Peace. Alberico Gentili and the Early Modern Law of Nations*.
[310] Vadi, 280.
[311] Shirk, "Boundaries in the Sea."

With the decline of the role of papacy and religious wars this way of allocating dominium and jurisdiction became problematic and lacked legitimacy among other European powers. A new way of allocating and acquiring property that would not be embedded within the papacy-centred discourse had to be invented. The British, and later on also the Salamanca school scholars argued that even if this donation was recognised by the Catholics, it would not be the case with Protestants.[312] The problem was thus not only with the authority of the Pope but also with the legitimacy of Catholic religion as a whole. The answer to this quandary initially came with the new natural law of nations and the just war theory discussed earlier. The Salamanca school offered the language of just war as an alternative to acquiring dominium as Francisco de Vitoria, Domingo de Soto, and Francisco Suarez rejected the validity of the donation along with the claims of dominion and authority of the Pope in the secular world.[313] As Pagden put it, what was at stake for Vitoria at that time was the question of 'how could a sovereign people be deprived of 'true dominion public and private'—that is, of their sovereignty (*dominium iurisdictionis*) and their property rights (*dominium rerum*)—by another?'.[314] The answer to the question was a voluntary surrender by a people, which in practice took place seldomly, or by means of what the victors held to be a 'just war'.[315] Bartelson pointed out that the Salamanca school unintentionally also contributed to the 'bifurcation of the global space opened by the discoveries into two distinct spheres – one of overseas possessions and the other of European states – which now were able to coexist within the same legal framework, but with very different meanings attached to concept dominium within each'.[316] While in the sphere of European states, the concept of dominium encompassed both, property rights and sovereign authority which were regarded as complementary, in the sphere of overseas expansion, dominion in the understanding of property rights was possible to claim even under the conditions of absence of dominium as jurisdiction.[317]

Gentili challenged the Spanish and Turkish claims over the sea, by (re-)introducing the idea of *Mare Liberum* or freedom of sea. Seeing the threat of Spanish universal monarchy that would disturb the balance in and beyond Europe, he argued that the prosecution of heresy was merely a pretext of the Spanish king for pursuing an imperial plan.[318] Gentili argued that the 'sea was 'by nature open to all […] and its use [wa]s common to all, like that of the air. It

[312] Pagden, *Lords of All the World. Ideologies of Empire in Spain, Britian and France c. 1500- c. 1800*.
[313] Pagden.
[314] Pagden, "Gentili, Vitoria, and the Fabrication of a 'Natural Law of Nations,'" 342.
[315] Pagden, 342.
[316] Bartelson, *Becoming International*, 54.
[317] Bartelson, *Becoming International*.
[318] Vadi, *War and Peace. Alberico Gentili and the Early Modern Law of Nations*.

c[ould] not therefore be shut off by any one'.[319] To deny the sea to others would according to him amount to a violation of the natural privileges and would amount to a just cause of war.[320] Gentili thus made a crucial distinction between dominium and jurisdiction of the sea. On one hand, he argued that claims regarding property of the sea were inadmissible, and on the other hand, different forms of jurisdiction could be exercised over the sea in order to punish or prevent crime and piracy. Pirates being the 'common enemies of humankind', were subject to universal jurisdiction and all sovereigns or non-sovereigns could punish them, although this should not be abused[321]. However, as Koskenniemi pointed out, Gentili had not yet established an actual legal framework and his were merely prudential recommendations that were taken further by Grotius' rights and obligations.[322]

The most famous challenge to acquiring dominium and jurisdiction by conquest and by gift came from Hugo Grotius in his essay *Mare Liberum* from his work in *De Jure Praedae* (1604) that became public several decades later. Grotius published this work at the request of the Dutch East India Company (VOC), in support of the Dutch claims over the capture of Portuguese ship Santa Catarina as a prize, on the basis of natural law. This capture was preceded by a trade ban issued by Philip III on the Dutch commerce in 1598 and led to Dutch embracing the practice of privateering.[323] To counter the demands of Spanish for a Dutch retreat from the East Indies, Grotius endorsed the 'freedom of trade and navigation […as] a natural right, innate to all free peoples, including Dutch merchants and their indigenous trading partners'.[324] In this text, Grotius following Gentili, embraced the Roman principle of freedom of seas and also introduced the concept of rights. He articulated navigation (among others) as a natural *right*, thereby introducing the concept of rights into the discussions. This conceptual shift took place, according to Epstein, by 'narrowing down the recipient of justice to the human species, together with the shift in the sense of *suum* or 'due', from 'one's due' to 'one's own'.[325] One's due expressed a 'place within a just order in which humans and other beings partook on levels of their being'[326]. In Thomist tradition of natural law, justice was topological and referred to 'apportionment of a certain amount of justness or fairness.'[327] The right is defined by Grotius

[319] Gentili cited in Vadi, 130.
[320] Gentili, *De Iure Belli Libri Tres*.
[321] Vadi, *War and Peace. Alberico Gentili and the Early Modern Law of Nations*.
[322] Koskenniemi, *To the Uttermost Parts of the Earth*.
[323] Halvard Leira and Benjamin de Carvalho, "Challenging Order at Sea," in *The Sea and International Relations*, ed. Benjamin de Carvalho and Halvard Leira (Manchester: Manchester University Press, 2022), 118–45.
[324] Martine Julia Van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595-1615*, v. 139 (Leiden ; Boston: Brill, 2006), xxii.
[325] Epstein, *Birth of the State*, 182.
[326] Epstein, 182.
[327] Epstein, 182.

as ‘a moral quality of the person enabling (*competens*) him to have, or to do, something justly’. The notion of right had thus shifted from the object of justice to its subject as ‘the beneficiary of the just relationship’, and its ability to act.[328] The language of rights in defence of free trade and navigation at first used against the Portuguese to challenge their claims over the sea and later on embraced by the neutral in defence of neutral shipping.

The colonial projects of the major powers at that time, the Dutch, English and French, were initially motivated by the fear of Spanish ‘world empire’ and throughout the sixteenth century the French and the English made many small-scale attempts to found ‘permanent settlements on the land of native peoples, particularly in North and South America, which could be used as bases from with to harass the Spanish Empire’.[329] These settlements were in practice used for trading rather than colonial occupation and involved only a small number of people.[330] Traders, explorers, and privateers from France, England, and United Provinces all openly contested the Iberian right of dominion over the seas.[331] The local rulers in South and South-East Asia and Africa also supported the principles of freedom of seas. These nations demanded ‘unlimited freedom of trade and free passage on the open seas’, and ‘defin[ed] every measure taken by Spain or Portugal to hinder such passage as itself an act of piracy’.[332]

Free trade and Privateering

During the 16th and 17th centuries European monarchies reformed into commercial empires, as trade became a major source of political power, and the sea became the theatre where conflicts over trade took place. The colonial empires that were formed during this period, as Bartelson argued, lacked the grounding in principles of territorial sovereignty and indivisible sovereignty characteristic of European states, and instead ‘presupposed that sovereignty was divisible and boundless in principle and possible to extend over vast spaces and discontinuous polities and populations’.[333] The disputes over how to demarcate sovereignty in pursuit of empire became especially prominent in the matters of oversea trade, where neutrality came to be constructed as a way to limit these claims of sovereignty in order to protect the freedom of trade threatened by the practice of privateering.

[328] Epstein, 184.
[329] Tuck, *The Rights of War and Peace*, 45.
[330] Tuck, *The Rights of War and Peace*.
[331] Vadi, *War and Peace. Alberico Gentili and the Early Modern Law of Nations*.
[332] Vadi, 280.
[333] Bartelson, *Becoming International*, 70.

Trade had come to be considered as one of the standards for greatness, which was also reflected in the maritime treatises of the natural law of nations, as the Irish jurist Charles Molloy would argue in *De jure maritimo et navali* (1676). The work of Molloy became a standard English treatise for matters in maritime and commercial law and was re-reprinted in twelve editions. Molloy argued that 'It is Foreign Trade that renders us rich, honourable and great, that gives us a name and Esteem of the World and makes us masters of the treasures of other Nations and Countries and begets and maintains our Ships and Seamen, the Walls and Bulwarks of our Country'.[334] Commerce and navigation were a matter of necessity sanctioned by the law of nature. The relationship between men and the outside world was re-defined in a way that conceived of men as being the masters of it, rather than part of a natural-social continuum in which nature had considerable epistemological function. The material world was created to be 'subservient to [men's] being and well-being' and men, knowing each other's the necessities were 'invited to traffique and commerce in different parts and emensities of this vast world to supply each others necessities.'[335] Trade he argued, would ultimately lead to 'the advancement, oppulancy and greatness of […] a Kingdom or State'.[336]

Not only was the right of freedom of navigation and trade grounded in the law of nature, it became an 'affair of state', with England and Holland becoming the new maritime powers in the seventeenth century, and the old Renaissance centres of trade waning. As a response to these competitive pressures in trade, other European monarchies took up the challenge and embraced trade as a reason of state. This subsequent 'pathological conjunction between politics and economy that turned the globe into a theatre of perpetual commercial war which was expressed in the phrase 'jealousy of trade'.[337] The maritime wars among the European powers began to be fought on a global scale from around 1600s as the dispute between the Iberian powers and the Dutch extended to America, Africa, and Asia. Although the wars were fought on a global scale, they involved major non-European powers – The Ottoman and the Mughal empire, China, and Japan – merely as belligerents' trading partners.[338] By the 17th century, the sea was produced as a 'continued sphere of war sperate from 'Europe'[339].

This intertwining of trade and war was embodied in the practice of privateering – after all, the Dutch East India Company since its conception and until the truce with Spain (1609)

[334] Charles Molloy, *De Jure Maritimo et Navali, or, A Treatise of Affairs Maritime and of Commerce in Three Books*, trans. Robert White (London: Printed for John Bellinger ... George Dawes ... and Robert Boulter ...,, 1676), 456–57, http://name.umdl.umich.edu/A51124.0001.001.
[335] Molloy, preface.
[336] Molloy, preface.
[337] Hont, *Jealousy of Trade*, 6.
[338] Jan Glete, *Warfare at Sea, 1500-1650*, 0 ed. (Routledge, 2002), https://doi.org/10.4324/9780203024560.
[339] Shirk, "Boundaries in the Sea."

was an instrument of war, rather than commerce, and its charter 'came close to an open-ended acceptance of privateering against Spanish and Portuguese shipping' as Leira and de Carvalho point out.[340] The practice of privateering by the late 18th century developed as 'a form of commercial warfare organised and conducted by non-state, or 'private' operators—as, indeed the name 'privateer' would suggest—but sanctioned by the state'.[341] When a war broke out, governments were able to issue the so-called letters of reprisal or letters of marque, authorizing the private entrepreneur to equip their ship(s) with weapons and hire a crew for the sake of seizing merchant ships of their enemies. After being brough to the privateer's home port, the case of prize would be brought before the Prize Court which would determine legality of the capture. 'Fair' or 'good Prizes', would become property of a privateer and the profits from their sale would be split between the government issuing the letter and the privateer.[342]

This practice was present in Europe since at least the twelfth century, its scale and scope rapidly increasing in the 1600s amid the religious wars, as this became a practice associated with protestant cause against the Catholic powers, as Leira & de Carvalho explain. The Huguenot captains would target Spanish ships during hostilities as well as peacetime, which weakened the French king's enemy, while also supporting the Huguenot's cause. In the long run, privateering was envisaged, as one of the Huguenot admirals stated, as a 'means to render traffic and commerce undertaken by the sea free and safe'. [343] This then also allowed to 'dispute Philip II's mastery of the seas while at the same time avoiding a military confrontation between the two countries'.[344] As the privateering increased, all Catholic ships regardless of the nationality would be attacked by protestant privateers and this model was later adopted by English and Dutch as an offensive strategy.[345]

Privateering thus initially operated outside of the just war tradition and the right of prize-taking in just wars was later incorporated into the natural law of nations tradition by Grotius and others.[346] However as prize taking-became more explicitly linked with war and embraced by major European powers, the defence of the freedom of commerce would be taken up by the neutrals. It was during the so-called Nine Years' War (1688–1697), when neutral flags were hoisted by Sweden and Denmark in order to protect their trade not only from belligerents but also privateers. While initially privateering was the means of securing the freedom of seas and

[340] Leira and Carvalho, "Challenging Order at Sea."
[341] Atle L. Wold, *Privateering and Diplomacy, 1793–1807: Great Britain, Denmark-Norway and the Question of Neutral Ports* (Cham: Springer International Publishing, 2020), 11, https://doi.org/10.1007/978-3-030-45186-8.
[342] Wold, *Privateering and Diplomacy, 1793–1807.*
[343] Leira and Carvalho, "Challenging Order at Sea."
[344] Augeron in Leira and Carvalho, 124.
[345] Leira and Carvalho, "Challenging Order at Sea."
[346] Leira and Carvalho.

commerce in the face of Spanish and Portuguese claims, this role was later taken over by the neutrals, and most prominently this idea was promoted by the Swedish and Danish, and later Dutch.

Neutral ships, ports, and goods

Neutrality of ships, ports, and goods became one of the chief concerns with respect to formation of law of neutrality. The concept of neutrality was extended from the legal person of a sovereign to include spaces and objects of trade. Further 'spatialisation' of neutrality led to new conceptions such as neutral ports, neutral ships, and at later stages neutral waters, that served to limit the practice of war in different ways. While Grotius limited his discussion of neutral territory to 'borderers' or states bordering the belligerent parties and thus considering only the land-based borders, it was now necessary also to limit violence on the sea from ports, which were the key sites of colonial trade.

With the overseas expansion of European states, sovereigns' ports were not necessarily attached to the territorial lands of the country. By the eighteenth century, major European commercial powers established highly advanced ports in far-away points of their empires which could be targeted by their enemies.[347] Since wars began to be fought globally, ports established by empires in other parts of the world would become targets of attack and one needed to distinguish between ports of friends, enemies, and neutrals. One of the first works discussing neutrality in relation to maritime commercial relations was Charles Molloy's treatise mentioned earlier. Neutral ports, or as Molloy called them, 'havens' or 'Peaceable ports' of neutral nations, were exempt from being attacked. In line with the Law of Nations, he argued, the enemy could be attacked and defeated on 'our own ground, on our Enemies', or on the Sea'.[348] However, it was unlawful to do this in a neutral port, and this, he argued, was grounded in the right of the one who had 'empire' there. Therefore, when enemy ships docked at the same neutral port, the neutral nation should provide for peace and 'interdict any hostile attempt to be made'.[349] On the other hand, he argued, the 'enemies in their own ports may be assaulted, burnt or destroy'd, by the Law of Arms'.[350] Neutral ports, like the territory of neutral

[347] Tara Helfman, "Commerce on Trial: Neutral Rights and Private Warfare in the Seven Years' War," in *Trade and War: The Neutrality of Commerce in the Inter-State System*, ed. Koen Stapelbroek (Helsinki Collegium for Advanced Studies, 2011).
[348] Molloy, *De Jure Maritimo et Navali, or, A Treatise of Affairs Maritime and of Commerce in Three Books*, 9.
[349] Molloy, 9.
[350] Molloy, 9.

'borderers' discussed by Grotius, were open to both belligerents and understood as spaces that suspended the friend/enemy antagonism, temporarily restoring the condition of peace among the belligerents.

This conceptualization was further developed by the Dutch jurist Cornelius van Bynkershoek (1756) who contributed to further delineating the neutral ports' territory from the sea as a site of warfare. Drawing on Molloy, he argued that the right of war against an enemy can be exercised only in 'our own territory, the territory of the enemy, or the territory that belongs to no one'.[351] In this case, the high seas being the territory of no one. Therefore, if hostilities were committed on the territory of a neutral, it was the same as making war 'upon the sovereign who governs there, and who lawfully repels every attack by whomsoever it may be made'.[352] The limits of the territory were famously defined by van Bynkershoek, 'where the power of weapons terminates'.[353] Like Molloy, he argued that it was not permitted to violate the port of a neutral power, which was open to all friends equally, and it was unlawful to use both, neutral harbor and neutral territory, to destroy an enemy. Although he contended that the victor had a right to pursue the vanquished even if he sought refuge in a territory of a neutral, although, the battle could not be started 'on the seas so near land that it is within reach of the cannon of the forts'.[354] This came to be known as the 'cannon-shot rule'. The crucial problem however was whether the ships were considered a part of a neutral territory or not, which was often expressed in terms of 'free ships make free goods' and became a continuous bone of contention throughout the years.

While the sea, could not be appropriated and was a dominium of no one, the property of states that was transported on the sea in the name of trade became a very politicised matter as trade became intertwined with war and led to the extension of the category of neutrality also to objects of trade. The disputes over neutral shipping recurred throughout the century, most prominently during the Nine Years' War, the Seven Years' war, and later the Napoleonic wars. Prominent supporters of the free ships make free goods doctrine were the Northern powers – Sweden, Denmark, and later on the Netherlands, whose ships were targeted by the privateers. The character of goods which were transported on ships of neutrals became a politicised issue and extension of neutrality over the objects of trade led to creation of a new category of neutral goods. These were juxtaposed to another new category of 'contraband', in order to distinguish

[351] Cornelius van Bynkershoek, *ON QUESTIONS OF PUBLIC LAW IN TWO BOOKS (1737) [Quaestionum Juris Publici, Libri Duo] of Which the First Is ON WAR the Second ON MISCELLANEOUS SUBJECTS*, trans. Frank Tenney (Lonang Institute, 2005), 33.
[352] Bynkershoek, 33.
[353] Bynkershoek, 33.
[354] Bynkershoek, 35.

between goods which were and which were not allowed to be sold to belligerent parties by neutrals. This would also determine whether the goods of neutrals were fair or unfair prize for privateers.

An important question was then whether the 'free ships make free goods', or whether the ship of a neutral nation could be considered an extension of the legal status of attached to neutral's territory during a war, which would render the goods on board neutral by default as well. There had been different opponents of the doctrine, at first especially France during the Nine Years' War (1688-1697) where the same principle was expressed in terms '*le pavillon neutre couvre la merchandise'* or a neutral flag covers the cargo. In France, the rejection of this principle was known as the rule of 'hostile infection', indicating that both the ship and all the cargo onboard would be contaminated by enemy character. Therefore all goods and, ware, or ships which touched the enemy's property were considered seizable.[355] The doctrine was especially enforced during the Nine Years' War to restrict the activity of neutrals' trade, as Schnakenbourg pointed out, and 'the Article 13 of a new instruction for prizes at sea of 16 August 1692 stipulated that all members of the crew of the vessel under arrest had to face questioning in order to determine the nationality, both of the ship and of the goods on board'.[356]

Similar ideas could be found in Molloy's treatise in which he argued that it was in line with the Laws of Nations that privateers could seize the goods and ships of the enemies and kill them. If a friend or neutral assisted an enemy with contraband goods, for instance with arms, these could be made a prize upon the capture.[357] If the neutral ship was discovered to carry forbidden or contraband goods, it became a fair prize and neutral ships were thus often targets of privateers. Although, as Schnakenbourg pointed out, in France this was not a consistently applied rule and the ships of Swedes, Danes and English 'would not be arrested by privateers even if their cargo belonged to enemies of France'.[358]

Bynkershoek pushed the discussion about neutral goods and contraband further and his work became an important legal resource of British admiralty courts for justifying the seizures of neutral ships. According to Bynkershoek, the ships were not seen as an extension of the territory but defined as 'vessels', and since vessels can be hired by the enemy, they were liable to examination and confiscation by the belligerent powers. He argued that it was lawful 'to

[355] Eric Schnakenbourg, "From 'Hostile Infection' to 'Free Ship, Free Goods': Changes in French Neutral Trade Legislation (1689–1778)," in *Trade and War: The Neutrality of Commerce in the Inter-State System,* ed. Koen Stapelbroek (Helsinki Collegium for Advanced Studies, 2011).
[356] Schnakenbourg, 96.
[357] Molloy, *De Jure Maritimo et Navali, or, A Treatise of Affairs Maritime and of Commerce in Three Books,* 13.
[358] Schnakenbourg, "From 'Hostile Infection' to 'Free Ship, Free Goods': Changes in French Neutral Trade Legislation (1689–1778)," 97.

detain a neutral vessel in order to determine not only from her flag, which might be deceptive, but also from the documents found on board whether she really is neutral'.[359] It was the character of goods that determined whether goods were harmful or not harmful to the belligerents, rather than the character of the flag of the ship. When a neutral's goods were in an enemy's ship it was unlawful that they should be confiscated by a belligerent, except for when these were contraband goods, he argued. And vice versa, when a neutral ship carried the enemy's goods, these goods (not the ship) may be subject to confiscation. Embedding the rules of neutral shipping in the character of the goods however made anything could potentially be considered as a means of warfare. As he stated in another chapter 'a neutral may lawfully carry corn to an enemy, except in case of a siege or famine', and even food could be considered contraband goods should one of the belligerents use food as a means of warfare.[360]

Bynkershoek's views on the neutrality of goods had a significant impact on the British prize courts which adopted them and thereby legally distinguished between trade *with* and *for* enemy, with the first being legitimate and the latter one not.[361] The subsequent 'Rule of the war of 1756' and the 'doctrine of continuous voyage' introduced by the British to limit the neutral trade of the Dutch with French colonies, which was perceived to be in favour of French, were based on Bynkershoek's ideas.[362] As Schnakenbourg pointed out, 'the English measures rested on the principle that flags and passports, which both testified the nationality, were not sufficiently reliable for considering the fairness of neutral shipping and trade. Neutral cover could be used in another way when neutral subjects, ships, and flags acted as go-betweens on a small scale'.[363] Not only was it often contested what belonged under the category of contraband, but the very relation between a neutral ship and neutral goods was questioned. The idea of neutral 'cover' was in fact recycling of the earlier ideas of Machiavelli and were often deployed by the British to justify their rights to confiscate the goods on board of neutral ships, as will be further discussed.

Rights vs. Interests

[359] Bynkershoek, 55.
[360] Bynkershoek, 40.
[361] Koen Stapelbroek, "The Rights of Neutral Trade and Its Forgotten History," in *Trade and War: The Neutrality of Commerce in the Inter-State System*, ed. Koen Stapelbroek (Helsinki Collegium for Advanced Studies, 2011).
[362] Stapelbroek.
[363] Eric Schnakenbourg, "Neutral Cover and Globalised Commerce in the Wars of the 18th Century," *Magallanica. Revista de Historia Moderna* 5, no. 10 (July 2019): 66.

In the context of commercial warfare on the sea, the earlier ideas associated with neutrality by Machiavelli were rearticulated by the British and neutrality was seen as a morally corrupt behaviour and an injustice to the 'mankind'. This was done first of all by associating neutrality with falseness and fraudulence, similarly to earlier articulations of Machiavelli in the context of expansion and preservation of Prince's power. This idea of neutrals concealing their true intentions was articulated in multiple pamphlets written by English authors against neutral shipping in the course of 18th century. For instance, during the Seven Years' War, *A discourse on the conduct of the government of Great Britain, in respect to neutral nations during the present war,* published by Charles Jenkinson in 1758, blamed neutrals for protracting and nursing the war 'under the banner of friendship' and serving the cause of the adversary. According to Jenkinson, it was a well-known fact that this conduct was not 'universally approved' and in fact neutral nations were protecting the property of the enemy. In a clear denial of the sovereignty claims of neutrals over their ships, Jenkinson argued that the protection that governments could give under their dominions did not extend to the sea, since the 'ocean is the public road of the universe'.[364]

Jenkinson went so far as to argue that this practice of neutrality did not merely cause injustice to the other party of the conflict because it increased the power of one party only, but it was 'injurious' to the whole of the 'mankind'. It tended to 'spread Discord among Nations, and from a single Spark of Contention to light up a general Flame'.[365] To establish such an example threatened 'to untie, the only Band which, holdeth Nations happily together, and to banish mutual Confidence from the various Communities of the Worlds'. [366] According to Jenkinson it was the inferior interest that induced neutral nations to transgress their duties and seek profit for themselves and inflicting 'wound to public justice'. Unlike in the earlier period when it was dismissed as an unwise judgement in relation to prince's 'state', neutrality was seen as harmful to the whole.

The rhetoric of the fraudulence of neutrality was yet again used in the course of the Napoleonic wars, as the British sought to further delegitimize commerce with the Bourbons, and to justify restrictions of neutrals' trade. James Stephen's *War in Disguise; or, The Frauds of the Neutral Flags* (1805), being one of the cases in point, which aimed to discredit the United States' trade with the French. Neutral flags were referred to as frauds that were the 'nursery

[364] Charles Jenkinson, *A Discourse on the Conduct of the Government of Great Britain* (London: Printed for R. Griffiths, 1758).
[365] Jenkinson, 4.
[366] Jenkinson, 4.

and refuge of the confederated navies'.[367] The abuse of neutral flags, he argued, led to the protection of trade and revenue of the enemy, among others. Napoleon was seen as the archenemy of the civilised world and in his words the 'shield of insidious neutrality [was] cast between the enemy and the sword of our naval power'.[368] To emphasise the fraudulent and for-profit character of this practice, Stephen introduced a new term 'neutralizing commission'. John Brown's text, *The Mysteries of Neutralization (1806*) then further developed the term neutralization, designating it as a fraudulent practice solely for the sake of profit of the 'petty maritime states' and a 'systemic violation of neutrality'. [369] In the very first paragraph of his text, he referred to it as 'the prostitution of neutral flags' which was 'derogatory to the honour of those sovereigns or powers, whose names are audaciously made use of to legalise the sale of maritime neutrality'.[370] Neutralization was an immoral practice akin to selling of a body for sex with, and neutralizers not only lacked common honesty but also robbed others of honours via this practice. He then recounted more than one hundred 'neutralizing establishments, formed for the sole purpose of covering, by fraudulent documents, the vessels and merchandise belonging to the subjects of the belligerent powers'.[371] This was further condemnation of what they viewed to be the a neutral trade *for* the enemy that the British sought to eliminate.

On the other side of the debate proponents of neutral rights, such as Martin Hübner, a lawyer and also an advisor to J.H.E. von Bernstorff, the Danish-Norwegian minister for foreign affairs. While England was trying to persuade everyone of French attempts at universal monarchy, this threat was in fact coming from England, Hübner argued, accusing England of using Machiavellian strategies of deceit and conquest. For Hübner, the very invention of the category of contraband was a corruption of the idea of neutrality, as it subjected neutrality 'to a struggle of national interests over the rights of belligerents and neutrals'.[372] Conventions could not be sources of law, and treaties could not be considered as obligations with universal validity and perpetual power, unless they were grounded in natural law.

Hübner argued that the problem neutrals faced was related to de-coupling of law nature and law of nations, which led to the 'lack of self-control of rulers and their societies in the international realm'.[373] The uncoupling of neutrality from natural law was for Hübner, an 'inlet

[367] James Stephen, *War in Disguise; Or, the Frauds of the Neutral Flags* (London: C. Wittingham, Dean Street, 1805), 4.
[368] Stephen, 10.
[369] John Brown, *The Mysteries of Neutralization, or, The British Navy Vindicated from the Charges of Injustice and Oppression towards Neutral Flags* (London: Printed by the author, and sold by Jordan and Maxwell, 1806), 3.
[370] John Brown, *The Mysteries of Neutralization, or, The British Navy Vindicated from the Charges of Injustice and Oppression towards Neutral Flags*,1.
[371] Brown, 5.
[372] Koen Stapelbroek, "Universal Society, Commerce and the Rights of Neutral Trade: Martin Hübner, Emer de Vattel and Ferdinando Galiani," *COLLeGIUM: Studies Across Disciplines in the Humanities and Social Sciences* 3, no. 4 (2008): 71.
[373] Stapelbroek, 67.

for power politics into the realm of international law'.[374] The Danish-Norwegian jurists understood the system of natural law to serve as a benchmark against which jurists had to recourse in areas that positive law was either silent or ambiguous about. The law of nations then provided 'general guidelines for wise statecraft and handling of international relations'.[375] To counter the claims of neutrals protracting war, Hübner argued that the law of nature dictated duties for neutrals which would restore the calm and peace in benefit of all states. As Schnakenbourg pointed out, Hübner believed in the 'natural sociability of mankind', in contrast to Hobbes, which implied that 'incontestably the natural situation of civilian societies is fundamentally a peaceful situation & a state of mutual agreement'.[376] At the centre of this sociability of European states were, according to Hübner, neutral rights and a duties, as they 'concerned the obligation of all to avoid anything that might prolong war, thus delaying the restoration of the peace that is the natural state of international relations'.[377] Therefore, it was the great duty of every neutral state 'to do everything possible to establish peace; and that for this purpose he must sincerely use his good offices, so that the injured party obtains satisfaction, if it is possible, if not, at least the war will soon be over'.[378] The legal form of neutrality concerning their rights and duties was thus modified to accommodate also the ethico-normative form of neutrality as peace making.

This ethico-normative form of neutrality was further developed by Emmerich de Vattel, who instead of trying to re-embed the law of nations in the natural law opted to reconcile it with the concept of balance of power and reason of state. As Richard Devetak pointed out, balance of power was central for his theory of law of nations as it allowed for preservation of the state-system based on independence and territorial sovereignty. Vattel granted the law of nations a greater degree of autonomy and separation from the law of nature, by reinscribing it into reason of state, thus allowing for states to be seen as having their individual ways of moral reasoning and political calculation with respect to the relations towards other states.[379] Europe, he argued, was 'a kind of republic, of which the members – each independent, but all linked together by the ties of common interest – unite for the maintenance of order and liberty'.[380]

[374] Stapelbroek, 71.
[375] Rørvik, "The Law of Nations at the Naval Academy in Copenhagen around 1800," 63.
[376] Eric Schnakenbourg, "From a Right to War to a Right of Peace: Martin Hübner's Contribution to the Reflection on Neutrality in the Eighteenth Century," in *War, Trade and Neutrality: Europe and the Mediterranean in the Seventeenth and Eighteen Centuries*, ed. A. Alimento, 400 (Milano, Italy: FrancoAngeli, 2011), 205.
[377] Schnakenbourg, 205.
[378] Martin Hübner, *De La Saisie Des Bâtiments Neutres Ou Du Droit Qu'ont Les Nations Belligérantes d'arrêter Les Navires Des Peuples Amis*, vol. 1–2, 1759, 44.
[379] Richard Devetak, "Law of Nations as Reason of State: Diplomacy and the Balance of Power in Vattel's Law of Nations," *Parergon* 28, no. 2 (2011): 105–28, https://doi.org/10.1353/pgn.2011.0080.
[380] Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, ed. Knud Haakonssen

Vattel connected the concept of good offices of neutrals to the concept of mediation and defined in more detail the tasks associated with this function and who was to be undertaking this role by assigning neutrals also an identity in the international order. The 'office of mediator' was characterised by a 'great degree of integrity, as of prudence and address', with mediator having to adhere to a 'strict impartiality'.[381] 'Mediation', he argued, 'in which a common friend interposes his good offices, frequently proves efficacious in engaging the contending parties to meet each other half-way,—to come to a good understanding,—to enter into an agreement or compromise respecting their rights,—and, if the question relates to an injury, to offer and accept a reasonable satisfaction'.[382]

Like Bodin, Vattel saw neutrals as having also an ordering function and being capable of restoring the 'political balance, or the equilibrium of power in Europe', although the function of mediation was seen as distinct from being a judge or arbiter.[383] This ethico-normative position of neutrality then gained an institutional expression with Catherine the Great assuming the role of 'mediatrix' between the United Provinces and England. Following the declaration of the war of England on the United Provinces shortly after the principles of the League of Armed Neutrality were introduced (discussed in the next section), Catherine offered her good offices for the sake of mediation between the United Provinces and England. As the Russian envoys, prince Gallitsin stated:

> her Imperial majesty does not hesitate to give fresh proof of her good intentions for bringing about a reconciliation between the two powers, whom she equally supports, and who have lived so long in that natural and perfect harmony which best suits their respective interests, by offering them, her services and mediation, for the purpose of putting an end to that discord and war, which has lately broken out between them.[384]

Lord Stormont, one of Britain's principal secretaries of state wrote in his reply to the offer of the 'Empress of all the Russias may be the sole mediatress of the peace'. [385] As he further noted, 'she has been the first to offer her good offices, and so powerful an intervention as hers, cannot gain any thing either in weight or influence by the accession of the most respectable allies' […]

(Indianapolis, Indiana: Liberty Fund, Inc., 2008), 324.
[381] Vattel, 294.
[382] Vattel, 294.
[383] Vattel, 294.
[384] Adam Anderson, *An Historical and Chronological Deduction of the Origin of Commerce, from the Earliest Accounts. Containing an History of the Great Commercial Interests of the British Empire. To Which Is Prefixed, an Introduction, Exhibiting a View of the Ancient and Modern State of Europe; Foreign and Colonial Commerce, Shipping, Manufactures, Fisheries of Great Britain and Ireland: And Their Influence on the Landed Interest.*, vol. 4 (London: Printed for J. White, Pleet-Street; J. Payne, Mews-Gate; J. Sewell, et.al., 1801), 342.
[385] Anderson, 4:342.

'her known impartiality and elevated views, are sufficient pledge of the manner in which she will conduct this salutary work'. [386] The empress of Russia thus assumed the role of 'mediatrix between Great Britain and Holland' … 'restoring the said states to their wonted peace and tranquility'.[387] The good offices of neutral Russia proved to be effective in mediating the conflict between English and the Dutch, and this role of mediators was following the Congress of Vienna taken over by the great powers.

The League of Armed Neutrality

Martin Hübner suggested to resolve the disputes over neutral shipping by establishing an international prize court in order to discourage capture of neutral ships by the belligerent nations and dismantling the national legal trade barriers to neutral trade erected by states such as England.[388] Instead of the international prize court, the answer to the problems of neutrality turned out to be the Armed League of Neutrality, established in 1780 during the Anglo-French (1778-1783) war and the American War of Independence (1775-1783) when the British Royal Navy imposed coastal blockades and unrestricted search for contraband. The persistent attacks of privateers on neutral ships culminated into the establishment of the League of Armed Neutrality in 1780 under the initiative of the Russian Empress Catherine the Great, being for the first time recognised as having an active role in the international order. The idea of neutrality backed by arms was not new and was initiated more than a hundred years earlier in 1691 by Sweden and Denmark which created the *Union des Neutres pour la Sécurité de la Navigation et du Commerce* in order to protect their trade and navigation from the war of England-Holland and France. This union was created in order to protect their rights and assure mutual assistance via common convoys in case their ships were to be attacked or captured on the North Sea.[389] The revived idea of armed neutrality that came to be known as the League of Armed Neutrality had however more ambitious goals, as a major power entered their circles.

It was not however, until a major power such as Russia, joined the ranks of the Northern powers that normative-legal form of neutrality was recognised as an institution supporting the international order. With the increasing British pressure on neutral trade, the initial idea of

[386] Anderson, 4:342.
[387] Anderson, 4:342.
[388] Stapelbroek, "Universal Society, Commerce and the Rights of Neutral Trade: Martin Hübner, Emer de Vattel and Ferdinando Galiani."
[389] Mikael af Malmborg, *Neutrality and State-Building in Sweden*, St. Antony's Series (Houndmills, Basingstoke, Hampshire ; New York: Palgrave, 2001).

armed mediation by Russia between England and France gave way to the League of Armed neutrality. The league was based on five principles elaborated by Catherine the Great in the memorandum delivered to the major European powers, all of whom except for England agreed with the principles laid out between 1780-1782.[390] These principles aimed to restore the free navigation of neutral vessels, including to and from the ports of the nations at war, and the principle of free ships make free goods which should determine the legality of prizes. These principles were articulated in the memorandum as being for the sake of the honour of her flag, safety of Commerce, and freedom of navigation of her subjects, and were delivered by Gallitsin, the Envoy Extraordinary of all the Russians to the States General, to the Courts of Versailles, Madrid, and London. The memorandum was then delivered to the Courts of Copenhagen, Stockholm, Lisbon, and to the States-General. The Northern states agreed to join the League, except for the Netherlands, which was prevented from joining by Britain which declared war upon The Netherlands in 1781 before the Dutch signed the treaty.[391]

The goal of league went beyond simply protecting the rights of free trade of neutral nations, rather the goal was to unite the neutral powers to create 'a natural system, founded on justice' [that would be] established and legalized in favour of the trade of neutral nations, which by its real advantages might serve for a future ages'.[392] The maritime forces of the Russian empire would be employed with the intention of observing 'strict neutrality', unless the empress would be 'provoked and forced to exceed the limits of moderation and perfect impartiality'.[393] The fleet would then be deployed only in cases when the 'necessity and the circumstances may require', leaving the decision to be an expressly political matter. [394]

The present maritime wars were seen to be disturbing the 'tranquillity of Europe' and the goal of the League of Armed Neutrality was to restore the balance in Europe necessary for the free trade that the practice of privateering disturbed. The calls for restoration of balance in Europe powers were present throughout the various declarations and memoranda issued in relation to the League. The 'vague and arbitrary conceptions held by the belligerent powers on the right of neutrals' were then juxtaposed to the rights 'established upon solid foundations and maintained in concert by the maritime neutral Powers' in conformity with the five principles introduced by Catherine. [395] The armed league of neutrality was thus an expression of a political

[390] Stapelbroek, "The Rights of Neutral Trade and Its Forgotten History."
[391] James B. Scott, ed., *The Armed Neutralities of 1780 and 1800. A Collection of Official Documents Preceded by the Views of Representative Publicists* (New York: Oxford University Press, 1918).
[392] Scott, 275–76.
[393] Scott, 212.
[394] Scott, 212.
[395] Scott, 284.

form of neutrality that aimed to create a new stable order in which the rights of neutrals would be protected through a concert backed by arms.

Although the concert of neutrals was short-lived, the guarantees of the legal form of neutrality would be provided through a concert of great powers following the Napoleonic wars when the legal form of neutrality became dominant.

4. Neutralization(s) of the Long 19th Century: from Obstacles to Agents of Peace

In the course of the 'long' 19th century neutrality became an often-used institution by great and small powers alike, with the concept undergoing some important transformations. With the consolidation of European public law, the legal form of neutrality was reified and gained a new institutional expression in international law, being later codified at the Hague conferences. Its function remained the same – containing violence, although in a more 'exclusive' manner than before, drawing its legitimacy from the positive law of nations. At the same time, a new category of 'perpetual neutrality' was introduced within the format of the Congress of Vienna that institutionalised it as a means of supporting European equilibrium by excluding certain territories from the great power competition. Permanent neutrality was a prerogative of the great powers which rendered the states which were granted this legal status as semi-sovereign or weak, as their existence within the international order was seen as dependent on the will of the great powers. Its meaning began to be contested as the European concert started to be perceived as dysfunctional. These new articulations of neutralization drawing on the different layers of the concept emerged as a means of re-defining the ethico-normative form of neutrals in Europe, but also beyond. With the new wave of imperialism, the political form of neutrality was conceptualised as a means of extending a new type of European order to what was perceived to be the 'non-civilised outside', and a different political form was articulated as resistance to the colonial practices and inclusion of these societies in the international society as independent states. As a political form it was rearticulated as both a means of 'civilising' the non-European societies, and as a legal form it was supposed to give order to the colonial enterprise.

The Vienna settlement

Following the Napoleonic wars and the restoration of Europe in the context of the Congress of Vienna, the question of neutrality returned to the European 'land' with a focus on how to reorganise territorial relations in a way that would allow for the stability of the European order. Neutrality not only developed as an institution of international law for the regulation of warfare by instituting particular rights and duties for states during the war in the course of this century,

but the concept of perpetual neutrality or neutralization became constitutive of the 19th century international society, cementing a hierarchic arrangement that privileged the role of the Great Powers which claimed to represent the interest of Europe as a whole. Neutral rights no longer had to be protected through military force, as was the case of the Armed League(s) of Neutrality but instead drew their legitimacy from European public law, and in the case of permanent neutrality, from the Great Powers' guarantees.

These conceptual developments were conditioned by the decline of prominence of natural law as a unifying moral structure against which the rights of neutrals were claimed. The decline of importance of natural law also coincided with the rise of an individualist ontology among Europeans and a larger transformation of the way relations between the social and natural world were understood, with 'scientific, economic, and political theorists calling for dissolution of natural and social entities into their primary components. The nature and purpose of larger combinations – be they of atoms or humans – was no longer assumed. Only experience could reveal connections between elements'.[396] Society began to be viewed as a 'multitude of self-directing individuals, who formed relationships and allegiances according to their own desires and purposes'.[397]

As international society began to be conceptualised into existence in the second half of the eighteenth century the plurality and difference of states started to be expressed in terms of their relative position to each other. As Hamish Scott pointed out 'the appearance of German science of 'statistics' (Staatenkunde), which, by collecting reliable quantitative information, facilitated […] calculations of relative international strength and which replaced the established juridical framework of public affairs'.[398] The assessments were not only quantitative but also qualitative and included categories of 'the scale and efficiency of government, the extent to which natural resources were exploited and even the moral condition of a ruler's subjects'.[399] (p.9). Neutrality then stopped being defined merely in relation to the friend/enemy dichotomy but also in relation to a certain rank within the international order and neutrals' importance on the influence of international affairs. These ranks of different powers were defined and solidified in international law of the 19th century.

[396] Reus-Smit, *The Moral Purpose of the State*, 124.
[397] Reus-Smit, 124.
[398] Hamish M. Scott, *The Emergence of the Eastern Powers, 1756–1775*, 1st ed. (Cambridge University Press, 2001), 8, https://doi.org/10.1017/CBO9780511496905.
[399] Scott, *The Emergence of the Eastern Powers, 1756–1775*, 9.

The Rise of Legal Positivism

These conceptual changes were paralleled by the rise of importance of positive law, this shift being exemplified in Robert Ward's *An Enquire into the Foundation and History of the Law of Nations* (1795). Ward argued that due to humanity's heterogeneity in culture and religion consensus about the content of natural law could not be reached. Although the role of natural law as part of the foundations of the Law of Nations could not be completely denied, he argued, there had to be 'something more fixed and definite as the foundation of the Law of Nations'.[400] This certainty was to be found in treaties, conventions, and international customs based on the sovereign will of states.[401] And so the new European arrangement was to be legitimised and stabilised via a series of treatises and legal mechanisms that the states made amongst themselves. Although natural law was no longer at the centre of discussions among jurists, as Koskenniemi pointed out, positivism was not opposed to it but rather a response to practical questions that natural law scholars could not address – rules and customs. The law of nations itself came to be seen as a historical product of European spirit and culture and the rules of the European public law were to be located partially in 'its very nature' and 'in part from the positive acts – treaties and customs – adopted by European sovereigns through an increasingly professionalised system of negotiation and treaty-making'.[402] The treaties and conventions that were seen as actually governing relations among states needed to modify the assumptions of perfect equality of natural law by taking into account differences in power and standing.[403] The treaties and customs forming the fabric of the positive law were to serve as the basis for the diplomatic practice of European states.[404]

In line with this, in 1813 and 1815 the states in the final coalition against France settled the boundaries of Europe in a mutually tolerable fashion that satisfied all the major powers, including France, and these territorial arrangements were to be guaranteed by a set of interlocking treaties and 'general great-power alliance' that eventually also included France.[405] This series of treaty guarantees was fortified by a mix of procedures and devices that included

[400] Ward in Reus-Smit, *The Moral Purpose of the State*, 133.
[401] Ward in Reus-Smit, 133.
[402] Martti Koskenniemi, "Into Positivism: Georg Friedrich von Martens (17561821) and Modern International Law," *Constellations* 15, no. 2 (June 2008): 194, https://doi.org/10.1111/j.1467-8675.2008.00484.x.
[403] Bartelson, *War in International Thought*.
[404] Koskenniemi, "Into Positivism."
[405] Paul W. Schroeder, "The 19th-Century International System: Changes in the Structure," *World Politics* 39, no. 1 (October 1986): 1–26, https://doi.org/10.2307/2010296.

conference diplomacy, and some general principles of the European Concert which were to protect the interests, rights, and equality of great power status, and at the same time committing them to perform duties associated with those rights. [406] These included 'respect for treaties, noninterference in other states' internal affairs, willingness to participate in the Concert's decisions and actions, and a general observance of legality and restraint in their international actions'.[407] Drawing on ideas of Enlightenment rationalism, Georg Friedrich von Martens and Johann Ludwig Klüber constructed '"Europe' as a political organisation of independent States, each seeking its own perfection – with the assumption that natural development would lead to the greatest happiness of all'.[408] Rejecting the speculation about universal norms, von Martens proposed to read the European diplomatic tradition 'as a kind of a legal system in operation'. The obligations of states, von Martens argued, stemmed not from the will of God but the 'mutual will of nations concerned'. The treatises of these scholars were based on the 'historical development of international legal doctrine between European states' – the facts.[409]

Within this new arrangement, not all the states were seen as equal. A paradoxical situation developed within the European law of nations, which relied on two contradictive ideas of 'sovereign equality' of all states and 'legalised hegemony' of the order constructed by the Great Powers, as pointed out by Gerry Simpson. Legal techniques were used to entrench their dominant position and to deny access to representation at the Congress to the small European powers. Secret protocols were drafted prior to the Conference and their diplomatic predominance granted the Great Powers superior legal power.[410] Many jurists saw the order based on predominance of great powers established after 1815 as a legal system, and defended the Great Power predominance.[411] According to Ian Clark, 1815 was 'a final de jure recognition of the inequalities that had always existed de facto in the balance of power system'.[412] European public law now served not only to facilitate peaceful coexistence among states but also served to legitimise and entrench a particular hierarchical order between the European states, of which the invention of perpetual neutrality became symptomatic.

[406] Schroeder.
[407] Schroeder.
[408] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (United Kingdom: Cambridge University Press, 2004).
[409] Reus-Smit, *The Moral Purpose of the State*.
[410] Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge University Press, 2004).
[411] Matthias Schulz, "Paradoxes of a Great Power Peace," in *Paradoxes of Peace in Nineteenth Century Europe*, ed. Thomas Hippler and Miloš Vec (Oxford University Press, 2015), 131–52, https://doi.org/10.1093/acprof:oso/9780198727996.003.0008.
[412] Ian Clark and Ian Clark, *The Hierarchy of States: Reform and Resistance in the International Order*, Cambridge Studies in International Relations 7 (Cambridge ; New York: Cambridge University Press, 1989), 2.

Conceptualising neutrality in international law

This paradox of legal equality and inequality of the order constructed by the European concert also translated into how neutrality and neutralization were discussed in European public law, as the rights and duties of neutrals in relation to war were based on legal equality of both neutrals and belligerents, while the new category of perpetual neutrality or neutralization implied a hierarchical relation between neutralized states and great powers. This legal form of neutrality articulated and institutionalised during this period also reflected the paradoxical status of sovereign equality and legal hegemony discussed by Simpson.[413]

The legal position of neutrality was institutionalised via the rights and duties of neutrals defined in the 19th century law and resolved the often-disputed issue in natural law of nations. The practice of neutrality however moved mostly to the land, as wars on the sea among European powers became largely absent, with the exception of Crimean War of 1854-56, following which the dispute over 'free ships make free goods' principle was settled in favour of position advocated by neutrals.[414] Core to the concept of neutrality became impartiality, which began to be seen in more exclusionary terms. For instance, legal treatises of the European jurists no longer considered the use of the army of a neutral state by belligerents as acceptable. As the prominent English jurist Travers Twiss would argue, the employment of a neutral state's troops by one of the belligerents belonged to the 'Middle Ages' and was contrary to its 'modern' meaning, ushered in with the Congress of Vienna.[415] With the emergence of 'national armies' neutrals could no longer provide armed forces to belligerents as Vattel would suggest. In the words of Swedish lawyer Richard Kleen, neutrality had to be 'perfect' or 'null'.[416] As Neff asserted, there was a growing emphasis put on neutrality being 'an absolute status, with no part-way gradations between belligerency and neutrality. Consequently, ideas of 'imperfect' or 'partial' neutrality steadily lost support'.[417] This more exclusionary aspect of neutrality was also reflected in its spatial characteristics.

The perception of international society as being ontologically separate led to new spatial characteristics of neutrality which no longer simply suspended friend-enemy relations

[413] Simpson, *Great Powers and Outlaw States*.
[414] Neff, *The Rights and Duties of Neutrals*.
[415] Travers Twiss, *Sir Travers Twiss et Le Congo: Réponse à La Revue de Droit International et de Législation Comparée et Au Law Magazine and Review* (Bruxelles: Office de Publicité, 1884).
[416] Richard Kleen in Neff, *The Rights and Duties of Neutrals*.
[417] Neff, 103.

on its territory, as the right of passage of belligerents through neutral territory previously implied, but now it completely excluded friend-enemy relations from neutral borders. Conceptually, there were now either belligerents or neutrals. This 'perfect' idea of neutrality was then codified at the Second Hague Peace Conference in 1908, stipulating that neutral states 'must not allow the movement of belligerent troops or war supplies across their territories, or the formation of or recruitment for belligerent forces in their territories, or the erection in their territories of war-related communications installations'.[418]

The most notable shift in the way neutrality was used was the invention of the so-called 'perpetual neutrality'. It was introduced at the Congress of Vienna in the Final Act of 1815, which established Switzerland and the City of Krakow as perpetually neutral under the great power guarantees. This perpetual neutrality later came to be known as 'neutralization' and was again applied to Belgium in 1839 and to Luxemburg in 1867 (among others). These 'lasting neutralizations of states', being first of all affairs negotiated by the Great Powers' collective agreements, imbued certain states and territories with a specific legal status in European public law.[419] However, unlike the 'Law of Neutrality' which presupposed equality of belligerents and would not need any special guarantees, perpetual neutrality and its durability was seen as a specific systemic responsibility of the Great Powers. The permanent status of neutrality could be guaranteed only by states who possessed the status of a Great Power and creating these permanently neutral states and imposing this status on particular states and territories was seen as their prerogative.

Hence this special status in international law needed to be distinguished from the 'regular' neutrality and semantically this was done by adding the adjective *perpetual*. The concept of perpetual neutrality as the name indicates was imbued with a different, universalising temporality which was to be independent of 'war time'. While the rights and duties of neutrals contained in the Law of Neutrality were typically tied to a legal state of war, having a precise starting and ending point. Perpetual neutrality was however designed with the intention to transcend war and was supposed to last 'forever', as the Final Act of Vienna stipulated. This was to express the permanence of this territorial arrangement which would turn these territories into independent states, and this territorial independence being guaranteed while the particular order based upon the Great Power hegemony was in place.

While the legal form of neutrality defined in relation to war had the goal of limiting violence and humanising warfare, permanent neutrality had an additional function and was

[418] Neff, 129.
[419] Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*.

designed with the intention of supporting the lasting and stable 'equilibrium' among Great Powers by permanently eliminating certain territories from the Great Power rivalry. The exclusion of these territories by recognising their independence was in the interest of Europe as a whole and was seen as necessary for the stability of the order. Tying this independence to the great power guarantees however, led to perception of a lack of sovereignty among these states which has persisted for a long time. As Hedley Bull pointed out, the independence or sovereignty of states can be seen by the great powers as subordinate to the needs of the system as they and tolerate or even encourage the 'limitation of state sovereignty or independence through devices as spheres-of-influence agreements, or agreements to create buffer or neutralized states'.[420]

Turning states such as Switzerland or Belgium (among others) into permanently neutral states also meant disqualifying them from being active participants in international affairs by treating them in the same fashion as the natural obstacles separating the potential 'theatres of war'. This significance of neutrality for maintaining the order based on great power hegemony drew on a specific understanding of neutrality from Carl von Clausewitz. Clausewitz' *On War* reflected on experience from the Napoleonic wars and his conception of neutrality mostly focused on its use when designing a war strategy. Taking into account their strategic geographical location, neutral states were in this text viewed in the same manner as great mountains, sea, or other 'great natural obstacles' – immobile and permanent objects. The way Clausewitz thought of neutral states was mostly in terms of how they could separate the different theatres of war as a natural obstacle. 'A river', he argued 'considered as a line of defence, must have at the extremities of the line, right and left, points d'appui, such as, for instance, the sea, or a *neutral territory***;** or there must be other causes which make it impracticable for the enemy to turn the line of defence by crossing beyond its extremities'.[421] As such the term referred to an object and or a subject that lost their capacity to cause harm. During the second half of the century as competition in arms among the Great Powers intensified, the idea of a neutral cordon separating potential battlefields gained traction.

This in-capacity to cause harm was then also translated into legal writings and some lawyers would argue that neutralized states were not proper sovereigns and lack free will. On the more extreme end of the spectrum was Thomas Lawrence, who emphasised the lack of freedom and passive status of neutralized states, which he argued was the chief difference

[420] Bull, *The Anarchical Society*, 16.
[421] Carl von Clausewitz, *On War*, trans. J.J. Graham (London, 1873), https://www.gutenberg.org/files/1946/1946-h/1946-h.htm.

between neutral and neutralized states. Although, legally speaking, neutrality was the same in all cases and inseparable into various kinds and classes, he pointed out, 'neutral states naturally divide into those which refrain from war of their own free will, and those which are obliged by the conditions of their existence to take no part in hostilities except for the defence of their frontiers from actual attack'.[422] Neutralized states lacked the 'free will' to become belligerents, they could not acquire this legal status through their own agency. Richard Kleen (1898), pointed to the lack of sovereignty of neutralized states, calling them half-sovereigns. Not only was neutralization 'imposed as a condition of the country's independence', but Belgium also could not make its own decisions in the affairs of war and peace, which Kleen deemed as an 'inseparable function' of a state's sovereignty. He finally concluded 'that 'instable and powerless' Belgium had been placed in a 'false situation' by the Great Powers, who had 'sacrificed' the country to their ambitions'.[423]

It is important to note that the concept of neutralization was not limited to states, and neutralization was also suggested and applied to waterways, railroads, ocean cables, etc. as a means of uniting everyone in a dense network of communication and trade. [424] Lawrence would also argue, the process of neutralization could be applied to buildings, ambulances and ships.[425] The neutralized states were thus seen in a similar fashion to inanimate objects.

While being seen as strategically important for the preservation of European order, the perpetual nature of neutrality was often interpreted as signifying states' weakness, passivity, and even a lack of sovereignty. It further reinforced the hierarchy between the great powers who perceived themselves as having wider interests of European territorial redistribution and security and the neutralized states which were rendered as weak and lacking in sovereignty. On the other hand, the legal position of neutrality that defined their rights and duties implied equality not only between both belligerents and neutrals, but also between states of different rank adopting this position.

[422] Edward Atkinson, "The Neutralization of Zones of the Ocean," *The Advocate of Peace*, January 1905; "Neutrality of Ocean Cables," *Advocate of Peace (1847-1884)*, April 15, 1870.
[423] Frederik Dhondt, "Edouard Descamps (1847–1933) From 'Negative Neutrality' to 'Positive Pacigerate,'" in *The League of Nations and the Development of International Law: A New Intellectual History of the Advisory Committee of Jurists*, ed. P. Sean Morris, Routledge Research in Legal History (London ; New York: Routledge, Taylor & Francis Group, 2022), 167.
[424] "Neutrality of Ocean Cables"; Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*; Atkinson, "The Neutralization of Zones of the Ocean."
[425] Thomas Joseph Lawrence, *The Principles of International Law*, 1st ed. (London; New York: Macmillan and Co., 1895).

To expand or not to expand?

This idea of weakness, passivity, or even lack of sovereignty of neutralized states led to its contestation towards the end of the century as the arms race between the European powers continued to escalate and extension of neutralization to other European states was suggested as a means of securing peace. This extension was however opposed by some, as it implied an increased power of the Great Powers and even disruption in the European equilibrium. While not being completely against neutralization, doubts about increasing the number of neutralized states were expressed by jurists such as Ernest Nys or Lassa Oppenheim, who were openly suspicious about the preponderance of the Great Powers. This type of neutrality, they argued, was supposed to be an exception rather than a rule.

Ernest Nys, a prominent Belgian scholar in the history of international law, argued that the prerogatives of the Great Powers had no basis in historical practice or in law and justice. 'Through its threats and the brutal exercise of its military superiority, the "European concert" has made itself feared to the point of being able to claim privileges and prerogatives with impunity'.[426] He was particularly concerned with jurists such as Richard Kleen who, he argued, gave the Great Powers' actions 'a scientific appearance' and thus a sense of legality. A 'false theory' or rights that would deprive states with permanent neutrality of their sovereignty, he argued, could be put into practice by the Great Powers.[427] This false theory of sovereignty being that neutralized states are denied their sovereign right to conduct war, which Nys spent considerable time refuting. Ultimately, he conceded that 'permanent neutrality is an exceptional situation which must be interpreted in a limited manner'.[428] A perpetually neutral state was not 'subordinate of other states' or a 'half-sovereign' or a 'vassal'. [429]

In a different fashion, Oppenheim also argued for neutralization to be an exceptional practice in order to avoid destabilising the European equilibrium. While for Nys the dangers of neutralization were about a legal predominance of Great Powers backed by brutal force and rejection of specific legal interpretation of neutralization, for Oppenheim expansion of neutralization became a question of 'political influence' as he tied it to the problem of balance of power. What was at stake for Oppenheim was the dangerous increase of 'political influence' of the Great Powers, as he considered the legal and political spheres to be separate.[430]

[426] Ernest Nys, "Notes Sur La Neutralite," *Revue de Droit International et de Legislation Comparee* 3, no. 2 (1900): 16.
[427] Nys, 15.
[428] Nys, 17.
[429] Nys, 17.
[430] Simpson, *Great Powers and Outlaw States*.

Neutralization, although variously applied, served broadly two goals: maintaining the balance of power in Europe and keeping 'a weak state as a so-called buffer-state between the territories of great powers'.[431] For Oppenheim the first and principal moral that could be deduced from the Law of Nations was that it could only exist 'if there be an equilibrium, a balance of power, between the members of the Family of Nations'[432]. Oppenheim preferred keeping the status quo, arguing that the 'Family and the Law of Nations could not be what they are if ever the number of neutralized States should be much increased. It is neither in the interest of the Law of Nations, nor in that of humanity, that all the small States should become neutralized, as thereby the political influence of the few Great Powers would become still greater than it already is'.[433] In other words the higher the number of neutralized states, the less influence these states would have had in international affairs, while the Great Powers' political power would increase to the point of disrupting the equilibrium underpinning the European legal order. The destabilisation of the order led to further contestation of the concept of neutralization and attempts to institutionalise different forms of neutrality.

On the other side of the debate over neutralization were the firm advocates of expanding neutralization to all corners of Europe, most prominently the Scandinavian states, which re-articulated the concept as part of their peace agenda, as the arms race among the Great Powers was ramping up. Drawing on the different layers of the concept developed over time, the legal form of neutralized states separating great power rivalries was modified to include a more active position of neutralized states in the international order as peace facilitators, reviving its ethico-normative form which now included pacifism. This was done initially by reconnecting with the idea of the 'great duty' of neutrals as mediators of peace for the sake of restoring the balance in Europe that the Scandinavian states, along with others, claimed in the 18th century.

This discursive work had been done by the Scandinavian peace movement which was one of the strongest proponents of expanding neutralization, and what may be termed as 'self-neutralization'. The first Congress of Peace and Freedom was hosted in Geneva in 1867 and was followed by many others on a smaller scale, and as Osterhammel noted, by 1889 pacifism turned into a transnational lobby. The first Universal Peace Congress, happening in the same year, was attended by 310 activists, and in total, twenty-three congresses took place until 1913, with approximately three thousand people sustaining the movement at its peak. The greatest achievement of the movement was the First Hague Peace Conference convened in 1899.[434]

[431] Lassa Oppenheim, *International Law. A Treatise*, 2nd ed., vol. 1 (London: Longmans, Green, and Co., 1912), 148.
[432] Oppenheim, 1:80.
[433] Oppenheim, 1:151.
[434] Jürgen Osterhammel, *The Transformation of the World.A Global History of the Nineteenth Century* (Princeton University

The Association for the Neutralization of Denmark was founded in 1882 and neutralization of Scandinavia became one of the chief goals of the Danish peace movement. Using the language of the great powers, its president and secretary Frederic Bajer would argue that neutralization of Denmark, Sweden, and Norway guaranteed by the great powers would be 'in the interest of the whole European policy' and would contribute to the 'general order'.[435] At the same time this arrangement would recognise their special role in international affairs as being able to procure peace. Neutralization of the Scandinavian states would proceed from their own 'desires', unlike the neutralization of Switzerland or Belgium which 'proceeded from the great powers themselves', claimed Klaas Pontus Arnoldson, who founded the Swedish Peace and Arbitration Society a year later and who would in 1908 together with Bajer receive the Nobel Peace prize.[436] Arnoldson, like Bajer, was a strong promoter of neutralization of Sweden and the Scandinavian states, and the expansion of this practice in other parts of Europe. Scandinavian internationalists saw it as a part of their states' special mission and argued that:

> neutral[ized] states had a special interest in and a unique ability *"*[…] *when it comes to doing great things for world peace."* […] Nowhere in Europe are there three neighbouring countries which can more rapidly and more easily – without giving up any freedom or rights of their constitutions – form an arbitrational community of neutralized states. In this regard the three Nordic states can lead the way.[437]

Two important claims are encompassed in this quote: first, by emphasising their freedom and the rights of their constitutions, they rejected the meaning of neutralization associated with Belgium or Switzerland whose independence was seen as dependent on the will of the Great Powers. Secondly, this echoed earlier ideas from the natural law of nations, and that of Martin Hübner specifically, that neutrals have a 'great duty' of restoring peace. The arbitrational community which was to serve as an example to be emulated and which was promoted in the form of international arbitration later at the Hague peace conferences was also tied to the idea of demilitarization. The pacific mission of the Scandinavian states included demilitarisation of these countries and the rejection of proposed fortification of Copenhagen as it was seen as a

Press, 2014).

[435] "The Scandinavian Peace Movement," *The Herald of Peace*, October 1, 1889, 288.

[436] K.P. Arnoldson, *Pax Mundi. A Concise Account of the Progress of the Movement for Peace by Means of Arbitration, Neutralization, International Law and Disarmament* (London: SWAN SONNENSCHEIN & CO. PATERNOSTER SQUARE, 1892).

[437] Karen Gram-Skjoldager, "Lilliputians for Peace: Scandinavian Internationalism and International Disarmament c. 1880–1940," in *Civilizing Missions in the Twentieth Century*, ed. Boris Barth and Rolf Hobson (BRILL, 2021), 113, https://doi.org/10.1163/9789004438125.

threat to Denmark's neutrality and peace.[438] Fortifying Copenhagen, Bajer argued, could lead to its navy becoming 'too great for such a small country' and thus prone to be used against the others.[439]

Similar claims about the peaceful mission informing the ethico-normative form of neutrality can be found in the work of Swiss and Belgian intellectuals. According to the Swiss lawyer Johann Kaspar Bluntschli, neutral states belonged within the category of intermediate and peaceful powers. This meant that they were 'not strong enough to play a great part in foreign politics and […were] mostly absorbed in domestic affairs'.[440] However, despite the 'modest' policy of these states, neutrality had 'very great importance, not only for their own inhabitants, but also because it limits and moderates the dangerous currents of *la grande politique'*.[441] During this period the restraint on the pursuit of empire was transformed in the ethico-normative form of neutrality into a restraint upon the great power politics.

The Belgian lawyer Edouard Descamps came up with a new term 'pacigérat positif' that was juxtaposed to 'old' and 'negative' conceptions of permanent neutrality based on the 'compression and erasure of the Peaceful nations'. It referred to a 'neutral's disinterested and active role in favour of the maintenance or restoration of peace', grounded in the principles of equal sovereignty and common peace.[442] Belgium's permanent neutrality, he argued, was an 'international constitution' and Belgium itself became 'an institution of order and peace for the preservation of political stability' of the international order.[443] This was seen as the continuation of the country's historical mission articulated in the context of Belgium's takeover of the Congo Free State and its declared neutrality.[444] Unlike the Swedish neutrals, Descamps sought to completely do away with the great power guarantees now that Belgium aspired to be a colonial power alongside the European Great Powers (discussed later). The 'pure' permanent neutralities, such as that of Switzerland and Belgium, he argued, were distinguished by their ability to practice it as a 'constant line of behaviour, without any kind of international treaty or protection'.[445] By linking its 'pureness' to a stable behaviour of the state, he intended to dismantle the constitutive link between permanent neutrality and the order based on a legal supremacy of the great powers enabled by positive law. The binding character of Belgium's permanent neutrality, he claimed, should hold regardless of the 'modifications the international

[438] Gram-Skjoldager, 113.
[439] "The Scandinavian Peace Movement," *The Herald of Peace*, October 1, 1889, 288.
[440] Johann Kaspar Bluntschli, *The Theory of the State* (Ontario, Canada: Batoche Books, 2000), 263.
[441] Bluntschli, 263.
[442] Dhondt, "Edouard Descamps (1847–1933) From 'Negative Neutrality' to 'Positive Pacigerate,'" 156.
[443] Dhondt, 163.
[444] Dhondt, "Edouard Descamps (1847–1933) From 'Negative Neutrality' to 'Positive Pacigerate.'"
[445] Dhondt, 164.

system had undergone after the Italian Wars of Independence and German unification, which dislocated the system of the Congress of Vienna'.[446]

In the case of the Scandinavian states their demilitarised neutralization was also not to be guaranteed solely by the great powers but also through the economic order based on free trade. The metaphor of the body reminiscent of the natural law, was resuscitated to describe the interconnected character of the order defined by the common interest in trade. This interconnectedness of the 'corporate body of Europe' according to Arnoldson meant that 'an injury in the foot of Italy may be said to cause pain right up to Norway'.[447] War was thus not seen as a legitimate duel between belligerents or a legal means of enforcing order but instead represented as a wound to the whole body. 'As a result of the extraordinarily rapid development of world-wide trade and intercourse, and the consequent community of interests', Arnoldson argued, 'a war between two States necessarily occasions more or less derangement to the rest. In this increasingly lies the surest guarantee that neutrality will be respected'.[448] And so he concluded that the security of neutral states will increase. Through neutralization, the Scandinavian merchant fleet, on which most of the countries relied, would be secured 'against the eventualities of the war'.[449] The legal form of neutrality reformulated this way would thus be guaranteed by the spirit of free trade.

The need for the neutralization of Scandinavia for the protection of free trade was a result of the decline of free trade liberalism in Europe as states began to be seen as economic rivals. This economic rivalry was preceded by the 'spirit' of free trade internationalism of earlier years, most prominently advocated by the English and adopted by other continental states. Of particular importance was the 1860 Anglo-French commercial treaty which was the pacemaker of further change, leading to the creation of a 'low tariff bloc' through a network of around 60 treaties between most of the Western European countries. [450] The Scandinavian states were among those enthusiastic promoters of trade liberalism, which for people like Richard Cobden held the promise of peace. Free trade was imagined as 'the only human means, of effecting universal and permanent peace ... Free-trade by perfecting the intercourse & securing the dependence of countries one upon another must inevitably snatch the power from

[446] Dhondt, 166.
[447] Arnoldson, *Pax Mundi. A Concise Account of the Progress of the Movement for Peace by Means of Arbitration, Neutralization, International Law and Disarmament*, 64.
[448] Arnoldson, 35.
[449] Arnoldson, 64.
[450] Andrew Howe, "Free Trade and Global Order: The Rise and Fall of a Victorian Vision," in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007).

the governments to plunge their people into wars.'[451] With Industrialisation and the Great Depression of 1873, national economies began to be seen as rivals and the gains of one were seen as threatening others' positions. It was not only firms, but nations competing with each other and pressures on securing and safeguarding national markets led to the introduction of tariffs and turning away from laissez-faire policies in public and private spheres. This led to a more interventionist role of the state in economic affairs.[452]

Neutralization was thus seen once again as a vehicle of preserving the capacity of the Scandinavian states to protect its economic interests, although it was no longer justified via claims of the shared morality of natural law. Neutralization was placed in the context of economic rivalries and protectionist policies now articulated in the name of interdependence. Rather than natural law, states were connected to each other through their dependence on trade and technological advancements that allowed for communication between far-away spaces in an unprecedented way.

At the same time, the strategic military significance of the legal form of neutrality was also retained, and it was still used as a means of separating the potential theatres of war. Mobilising the language of balance of power, Arnoldson argued that neutralization of Scandinavia was of a higher importance than that of Belgium and Switzerland for the 'interests of the great powers are greater and more equally balanced around the Scandinavian North than around those two small continental states [… and] neutralized Scandinavia would be a Switzerland among the seas; a breakwater in the way between England and France on the one side, and Russia and Germany on the other'.[453] Neutralization was then to be further expanded to other territories between the Great Powers that were seen as the locus of their rivalry:

> By constituting Elsass-Lothringen into an independent neutral State, a division would be made between France and Germany, and these great powers would be separated by a huge wall of neutral States which would also narrow in an essential degree the European battle-field. The same result is hoped for from a confederacy of neutral States on the Balkan, with respect to the relations between Russia and Austria, as well as with respect to the whole of Europe.[454]

[451] Richard Cobden in Howe, 37.
[452] E. J. Hobsbawm, *The Age of Empire, 1875-1914*, 1st Vintage Books ed (New York: Vintage, 1989).
[453] Arnoldson, *Pax Mundi. A Concise Account of the Progress of the Movement for Peace by Means of Arbitration, Neutralization, International Law and Disarmament*.
[454] Arnoldson, 77.

This idea of expanding neutralization as excluding states from great power rivalries was not limited to the Scandinavian peace activists. Leonid Kamarowski, a member of the Institute of International Law, argued along similar lines, seeing neutralization as one of the means of international law which could reconcile the 'exclusive and often hostile interests of different peoples' and help avoid the 'universal war'.[455] Kamarowski argued that, like Belgium and Switzerland, the principle of neutrality sanctioned by the Congress should be applied also to Alsace-Lorraine, Belgium and Holland united in one state (with their consent), and to Denmark, either alone or in federation with the other two Scandinavian countries. Neutralization of these countries would then resolve the contemporary situation of an 'armed peace' caused by antagonism between Germany and France, and Russia and England, and the 'Eastern question' concerning the 'liquidation of the sick man'.[456]

In the context of the destabilisation of European order based on Great Power management, new claims of legal and ethico-normative form of neutrality in the order emerged via different actors that reclaimed the active role of neutrals in maintenance of the order and also to limit the tensions and potential scale of violence. This neutrality also took on a political form insofar as these actors were trying to not only decrease tensions among the great powers but also to create new institution for conflict resolution such as the arbitrational community and shift the hierarchical arrangement between great powers and permanently neutral states established via the previous legal form of neutrality.

The Race for Imperial Expansion

Parallel to these debates on the neutralization of European states as a means of limiting Great Power rivalries and securing peace, its extension outside of Europe began to be contemplated with conflicts among the European powers unfolding in Asia, Africa, and the Pacific. There were two uses of the concept as it was exported outside of Europe, in attempts to extend the European order there. Firstly, in relation to the Congo basin, neutralization was articulated with the goal of facilitating free trade for Europeans and to peacefully channel the 'scramble for Africa'. Rather than justifying it through interdependence, the idea of the Congo basin as a space of free trade was embedded within the discourse of the European civilising mission.

[455] Leonid Kamarowski, "DES CAUSES POLITIQUES DE GUERRE DANS L'EUROPE MODERNE," in *Revue de Droit International et de Legislation Comparee*, vol. 20 (Bruxelles et Leipzig: DES CAUSES POLITIQUES DE GUERRE DANS L'EUROPE MODERNE, 1888), 133.
[456] Kamarowski, "DES CAUSES POLITIQUES DE GUERRE DANS L'EUROPE MODERNE."

Secondly, in other parts of Africa and Asia the use of the concept in relation to Egypt and Afghanistan was contemplated as a possibility of separating the competing 'spheres of influence'.

The question of neutralization of territories outside of Europe was intimately linked with the new form of imperialism that developed in the latter half of the century. Initially, the European Concert was preoccupied with mostly European affairs, except for the 'Eastern Question' concerning the instability and breakup of the Ottoman empire, often referred to as the 'sick man of Europe'. Concerns over non-European areas were left to Christian missionaries and humanitarians, with states limiting themselves to the 'adoption of legal provisions under which private trade and economic development, education and technological regeneration might be undertaken through commercial or humanitarian societies'.[457] The jurists of the early nineteenth century saw the native communities as existing outside of European public law, which did not provide a legal framework for their relations with European states. Instead, it was considered as sufficient that natural law would provide protection for both, Europeans and native communities, considering them as equal to travellers or trades, having the same obligation to show courtesy and refraining from violent actions towards each other, as Koskenniemi pointed out. In particular, natural law was important for defining property relations and explained why the natives were obliged to respect the possessions and lives of Europeans not covered by the European public law and how the commercial relations between natives and Europeans should take place.[458]

Nineteenth century imperialism, Koskenniemi noted, was initially mostly informal and the state was not directly involved until the late nineteenth century. This informality meant that 'the colonial encounter' occurred between native tribes or individuals, and missionaries, humanitarian associations, commercial companies, private individuals, and others.[459] The revival of old forms of colonialism popular in the seventeenth century was accompanied by the founding of colonial societies in all major European states. As a result of that, a 'muddle of international legal titles' emerged. These included: 'scientific discoveries and explorations; cartographic surveys; symbolic and factual, if also still scarcely effective occupations; and thousands of treaties of often obscure types that the private and colonial societies concluded with indigenous chieftains'.[460] Without the involvement of the state in these colonial encounters, institutions such as neutrality were not seen as necessary.

[457] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, 111.
[458] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[459] Koskenniemi.
[460] Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, 215–16.

It was only from around 1879-1889 that steps towards formalising the empire were taken by the European states, and European public institutions were to be installed into colonial territories. European sovereignty in particular.[461] Its extension into non-European territories through colonisation was one of the four techniques by which European public law was to be universalised beyond the continent. Anthony Anghie identified four interrelated techniques through which the non-European peoples were to be brought into the sphere of international law: treaty-making imposing unequal obligations; colonisation via conquest, annexation, or cession which entailed full projection of European sovereignty; acceptance of non-European peoples into the international society (e.g. Japan); and protectorates which were a flexible legal instrument allowing European states to regulate 'the degree of sovereignty of a local ruler, depending on circumstances'.[462] In the context of extending neutralization to the non-European territories, protectorates were the institution which was discussed as an alternative to neutralization of the non-European territories, or to a certain degree it was also seen as compatible with it, as will be discussed later.

This expansion of European empires with the direct involvement of the state had important and novel economical aspects. As Eric Hobsbawm pointed out, a new form of imperialism emerged during this period and the concept of empire no longer referred only to 'ancient forms of political and military aggrandizement' but acquired an economic dimension that it subsequently never lost.[463] In the 1890s, imperialism became part of political and journalistic vocabularies as debates about colonial conquests were led in Europe. The emergence of this new form of imperialism was conditioned by emergence of a single global economy which progressively drew in remote parts of the world, incorporating them into 'an increasingly dense web of economic transactions, communications and movements of goods, money and people'.[464] This economic web created links not only *between* 'developed countries' as discussed earlier, but as Hobsbawm pointed out, also *with* the 'underdeveloped' part of the world.[465] During this period, the peripheral part of the global economy gained increasing significance as a potential market for European products but also as a source of labour and natural resources which could be exploited and commodified.

Another aspect of this new wave of imperialism was the symbolical significance that colonial expansion acquired, as the status of a Great Power began to be linked with possessions

[461] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[462] Antony Anghie, "Finding the Peripheries: Colonialism in Nineteenth-Century International Law," in *Imperialism, Sovereignty, and Making of International Law* (Cambridge University Press, 2004).
[463] Hobsbawm, *The Age of Empire, 1875-1914*, 60.
[464] Hobsbawm, 62.
[465] Hobsbawm, *The Age of Empire, 1875-1914*.

of colonies, regardless of their value.[466] While British, French and Russian imperialism brought clear economic benefits for them, the imperialist aspirations of Italy and Germany illustrated 'how far the possession of colonies had become a matter of national prestige rather than a matter of national interest or of economic advantage'.[467] Attempts to institutionalise pride in imperialism among the colonial powers were carried out through various practices such as creation of an 'Empire Day' in Britain in 1902 or establishment of colonial pavilions and colonial exhibitions. 'British jubilees, royal funerals and coronations were all the more impressive because, like ancient Roman triumphs, they displayed submissive maharajahs in jewelled robes – freely loyal rather than captive'. [468] As Hobsbawm noted 'the idea of superiority to, and domination over, a world of dark skins in remote places was genuinely popular, and thus benefited the politics of imperialism. Furthermore, if great powers were defined as states which possessed colonies, small powers had 'no right' to them, with only the Belgian king and the Dutch being allowed to maintain their colonies.[469] Possessing a colony and what came to be later known as the 'sphere of influence' came to be seen as defining feature of the Great Powers and what distinguished them from the rest. Furthermore, the role of the Great Powers was also linked to their civilising mission outside Europe. The Belgian colony in Africa was however a matter of controversy for years, and the problematic extension of European order to non-European territories was evident with the application of neutrality to the Belgian part of the Congo basin.

Civilising Congo

With increasing clashes among European powers seeking to carve out their share in non-European lands, attempts to reconcile their competing interests in Africa in a multilateral fashion came with the Berlin Conference, which was supposed to set the rules according to which colonisation of African territories was to proceed. The conference was initiated by the chancellor of the German Empire Otto von Bismarck and took place between 1884-1885. The official goals of the conference were to set up a system of free navigation of the rivers of Congo and Niger, provide guarantees for freedom of trade in the basin and mouth of Congo, and setting

[466] Hobsbawm.
[467] Paul Keal, *Unspoken Rules and Superpower Dominance* (London: Palgrave Macmillan Limited, 1983), 18.
[468] Hobsbawm, *The Age of Empire, 1875-1914*, 76.
[469] Hobsbawm.

up common rules of acquiring new territories.[470] Deliberations at the conference completely excluded the participation of African people, who were neither consulted or informed about it. The argument presented by the jurists was that the tribes were 'too primitive to understand the concept of sovereignty to cede it by treaty'. [471] This argument also served to exclude the claims of sovereignty by various groups of European adventurers taking advantage of the treaty mechanism. The continent came to be viewed as a conceptual *terra nullis*, in which only the decisions of the European states towards these territories were understood to have 'decisive legal effect', with non-European communities becoming 'a passive background to the imperial confrontation'.[472]

One of the means through which the competing interests of European states were to be reconciled was the establishment of a free trade zone in the Congo basin and its neutralization, thus extending the spirit of free trade internationalism into colonial endeavours. In the colonial context, neutralization of the Congo basin was not articulated within a justification of existing interdependence which would imply equality of the states in the economic system. Rather, it was articulated as a civilisational mission that reflected underlying ideas about how Europeans defined themselves against the barbarian 'other' based on biological terms. By the 1870s ideas from evolutionary sociology and social anthropology about human development being on a scale of stages from primitive to civilised also came to inform international law, and civilisation encompassed those attributes that were valued by international lawyers in their own societies. While at the same time being the means of self-identification against the barbarian, uncivilised, and savage 'other', with lawyers seeing themselves as the guardians of civilisation.[473]

This reflected a broader consciousness in Europe where large parts of populations came to believe that 'progress' was indigenous only to one part of the world, while the other, much larger part of the world was capable of achieving progress only via European conquerors, with the help of minority of local collaborators.[474] In international law, this discourse of exclusion-inclusion on the one hand operated based on the cultural otherness of the natives that 'made it impossible' to grant the same rights to non-Europeans. On the other hand, the inclusion articulated as natives' similarity to Europeans erased the otherness of the natives by a universal

[470] Andrew Fitzmaurice, "The Justification of King Leopold II's Congo Enterprise by Sir Travers Twiss," in *Law and Politics in British Colonial Thought*, ed. Shaunnagh Dorsett and Ian Hunter (New York: Palgrave Macmillan US, 2010), https://doi.org/10.1057/9780230114388.
[471] Anghie, "Finding the Peripheries: Colonialism in Nineteenth-Century International Law," 91.
[472] Anghie, 91.
[473] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[474] Hobsbawm, *The Age of Empire, 1875-1914*.

humanitarianism which was a means through which native institutions would be replaced by European sovereignty. [475]

The relation between the civilising mission of the law and trade was complementary and came as part of the same package in the case of Congo. Civilisation and progress in these parts of the world would not only be achieved by installing European institutions of international law, but also via free trade. As Erik Ringmar noted: 'The unimpeded circulation of goods, money, people, and ideas assured that civilisation would spread, and the more civilised the countries of the world became, the more attentive they would be to the stipulations of international law'.[476] The idea of neutralization of the Congo Basin for the sake of free trade was articulated for the first time a few years prior to the Berlin Conference as a means of advancing civilisation in Africa, as well as limiting rivalries among the European states. Discussions about the viability of this solution and how to go about it took place initially among the jurists of the *Institut de droit international* founded in 1873. This new generation of lawyers believed that 'international law', although historically specific to Europe, 'was prospectively authoritative for the globe: that only Europe could claim to have produced and experienced the progressive civilisation that was ostensibly humanity's vocation and destiny'.[477] In the spirit of civilising the non-European other, neutralization of the Congo basin was discussed by these men as a means of 'internationalising' as opposed to conquering and annexing the territory by one of the Great Powers. And as Koseknniemi noted, the enlightened *esprit d'interantionalité* was initially stressed by lawyers in Europe in order to balance nationalism, and when sovereignty did not work well for the progress of the civilising mission outside of Europe, the internationalist spirit was also extended there.[478]

At one of their meetings in 1878 Gustave Moynier, the president of the Red Cross, pointed out the increasing attention given to the exploration of the Congo River, and the necessity to 'check the impending scramble and to see to the orderly progress of the civilising mission in this enormous region of central Africa'. [479] He then suggested that it should be done by establishing a regime of free navigation which was to be administered by an international commission, akin to what had been established on Danube.[480] Similar ideas were then presented under the banner of neutralization of the Congo River a few years later by Belgian lawyer

[475] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[476] Erik Ringmar, "The Recognition Game: Soviet Russia Against the West," *Cooperation and Conflict* 37, no. 2 (June 2002): 5, https://doi.org/10.1177/0010836702037002973.
[477] Pitts, *Boundaries of the International*, 152.
[478] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[479] Koskenniemi., 121.
[480] Koskenniemi..

Emile de Leveleye, who was one of the founders of the Institut. De Laveleye argued that neutralising the mouth and the banks of the river would bring the states which were 'too often divided by prejudices, jealousies, apprehensions or military rivalry, join thus in common labour for the good and progress of mankind in general'.[481] Neutralization of the Congo basin would thus unite the colonial powers in their civilisational mission and unify their conflicting interests. Neutralization was thus articulated as a political position, being the vehicle of internationalisation that was to create the 'international' as a field with new rules and roles, without the great powers being the custodians of the order. Rather than the balance of power supporting the organising principle of the system, the internationalist spirit was to unify everyone.

Unlike the neutralizations enacted by the Concert in Europe, this one was to be realised through the *Association Internationale Africaine,* set up by the Belgian King Leopold in 1876, which was to be recognised as a 'neutral and independent' administrator of the territory, akin to the Red Cross.[482][483] It was the 'international and disinterested character' that would allow the organisation to bring together 'without distinction of either nationality or religion, all who are willing to co-operate in the great work of exploring Central Africa, of contending against the extension of the slave trade and of introducing civilisation to these dark regions'.[484] The International African Association, de Lavelye argued, was the second 'Red Cross Society', which selects for its sphere of action the unexplored regions of Africa instead of the battle-fields of Europe'. [485] Within these early proposals, neutrality was to be guaranteed by a private organisation whose neutral status was associated with its 'international and disinterested' character as an administrative body.[486] Leopold's 'neutral organisation' was to be seen as apolitical – it was supposed to represent interests of no state in particular, while at the same time uniting all the nations through its internationalist spirit. An international organisation as a guarantor of neutralization of these territories was also a way of overcoming the problem of how to export European institutions which were grounded in a specific European order based on the Great Power supremacy that began to fall apart toward the end of the century.

[481] Emile de Laveleye, "The Congo Neutralized," in *The Contemporary Review,* vol. 43 (56, Ludgate Hill, London: Isbister and Company Limited, 1883), 779.
[482] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960.*
[483] The Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was signed 1864 and recognized neutrality of ambulances, military hospitals, hospital and ambulance personnel. Any flag and armlet with the symbol of red cross on white background was to enjoy neutrality in "Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864," accessed March 13, 2023, https://ihl-databases.icrc.org/assets/treaties/120-IHL-GC1864-EN.pdf.
[484] de Laveleye, "The Congo Neutralized," 798.
[485] de Laveleye, "The Congo Neutralized," 798-780.
[486] de Laveleye, "The Congo Neutralized," 798-780.

There was however not a unanimous solution on how to reconcile the competing interests over the Congo basin and opposition to this was raised by Travers Twiss, a member of the Institut, on behalf of the Belgian King Leopold who argued like Levelye that the administration of the Congo basin should be conducted by the *International Association,* however as a sovereign state with its protectorate. Protectorates, becoming a popular mechanism used by the colonial powers towards the end of the century, could effectively mean anything that the 'the protecting power wanted them to mean' and allowed for extension of sovereignty to various degrees'.[487] Instead of neutralization of the river and adjoining territories, Twiss proposed that agreement concerning internationalisation and freedom of navigation should be signed, accompanied by a declaration of disinterest by the colonial powers. Vesting a private entity with sovereign rights was not unprecedented, he pointed out, and listed the example of Western expansion via philanthropic and charter companies that began in the sixteenth century.[488] The idea of neutralization was rejected, as it would imply prohibiting the entry of armed vessels in the river – its part or as a whole. He saw this as unacceptable and leading to different forms of violence and crime. The clashing national interests present in Congo had to be constrained via a legal framework which needed to be backed by arms so that peace was maintained.[489] Rather than seeing it as a means of peace, neutralization was associated with violence.

The debate was settled at the Berlin Conference as neutralization of this territory was established within the Final Act of the conference, however, in a different manner than envisaged by the members of the Institute. In line with the idea of the civilisational mission of international law, neutralization was endorsed by the European powers in the name of the 'development of civilisation' through peace, and as the General Act further stated, it would provide security of commerce and industry.[490] Replacing the great power guarantees, an International Commission of Navigation of the Congo was to be set up to 'supervise the application of principles proclaimed and established' in the Declaration. In the end, the international commission originally planned never came into being and Leopold put in place a 'fully exclusionary system in the river', and although the centre of Africa was to become 'internationalised', it instead became Belgian.[491]

[487] Anghie, "Finding the Peripheries: Colonialism in Nineteenth-Century International Law."
[488] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960.*
[489] Fitzmaurice, "The Justification of King Leopold II's Congo Enterprise by Sir Travers Twiss."
[490] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960,* 71.
[491] Koskenniemi, 127.

Neutralization of this territory in the end to proceeded through colonial states' extension of sovereignty which was supposed to transfer the legal position of neutrality established through European public law to their corresponding protectorates. The protectorates would in case of war acquire the same rights and duties as their European motherlands, thus eliminating violence for the sake of protection of their trade. The Genal Act further stated that when a war between European states broke out, trade within these territories could continue under the free trade regime as was provided for in article 11. The article stipulated that if one of the powers exercising sovereignty or protectorate rights over these countries which were under the regime of commercial freedom, may be 'placed for the duration of the war under the regime of neutrality and considered as belonging to a non-belligerent State'. [492] The belligerents could subsequently renounce 'the extension of hostilities to the territories thus neutralized' and use them as the 'bases for the operations of war'.[493] This formulation, however, as Schmitt pointed out, blurred the distinction between the soil statuses of European and non-European territories which was foundational for the spatial structure of the European law.[494] This indistinguishability also implied that the whole spatial structure of European law had to be discarded because of the differences in the way interstate wars in Europe were bracketed, in contrast to the way colonial wars were pursued. In the later interpretation of the article 10, only the soil status of European sovereign states was recognised, and neutrality of the colonial territories would be recognised based on whether the European state became a theatre of war or remained neutral.[495]

Extension of European states' neutrality onto the territories of Congo however created problems in the case of Belgium and its status as a perpetually neutral state. The first being whether the status of Belgium's perpetual neutrality with Great Power guarantees would be transferred to the Belgian part of the Congo basin, which was recognised to be an independent state (the Congo Free State) in a personal union with King Leopold in 1885. As Schmitt pointed out 'Belgium's neutrality belonged to the spatial structure of [the old] European international law' and this soil status 'occasioned by the neutralization of the state and its constitutive significance in the bracketing of European war, could not be transferred to African colonial soil and to colonial war'.[496] Extension of this institution to non-European territories thus became problematic. According to the Belgian interpretation, the Congo Act alone determined

[492] "General Act of the Conference of Berlin Concerning the Congo," *The American Journal of International Law* 3, no. 1 (1909): 12, https://doi.org/10.2307/2212022, 14.
[493] General Act of the Conference of Berlin Concerning the Congo,14.
[494] Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*.
[495] Schmitt.
[496] Schmitt, 222.

the status of the territory, and its neutrality was thus seen as 'optional' and different from the permanent neutrality of Belgium which was guaranteed by the Great Powers. The Congo Free State was then annexed by Belgium in 1907 and recognised by the powers guaranteeing Belgium's neutralization in 1839.[497] Some even argued that the annexation of Congo by Belgium would compromise Belgium's neutrality, as it was 'not compatible with the country's perpetual neutrality'.[498] Its pursuit of colonial expansion would jeopardise its neutrality as it clashed with the idea of permanently neutral states being passive weak states lacking in sovereignty. It is in the context of these discussions that Descamps re-defined the permanent neutrality as existing outside of the European positive law after the Congo Free State was appropriated by Belgium and its neutrality was defined by the constant line of behaviour rather than the will of the great powers.

Between the Spheres of Influence

Extension of neutralization outside of Europe was not presented in all cases as a civilising mission and a means of internationalisation of the territories that were disputed by the colonial powers. It was considered in an opposite logic as well, as a means of excluding other powers from certain territories they deemed to be part of their 'spheres of influence'. The strategic position of neutrality was thus considered to be institutionalised in order to provide order of the colonial expansion in other parts of the world. As Schmitt noted, the language of balance of power gradually replaced civilisational goals and by 1914 there was barely any room left for philanthropic and humanitarian ideals.[499] The term spheres of influence came 'into vogue in connection with the scramble for Africa', as Keal noted, although it can also be found mentioned around this time in connection to imperial pursuits in Central Asia, and more specifically, in Afghanistan. It was considered 'one of the rules in the great game of colonial aggrandisement' and this was evident when the question of neutrality was contemplated in Egypt or Afghanistan. [500]

The idea of Egypt as a possible 'African Belgium' was briefly discussed in 1882 after the intervention of the French and the English who intended to separate Egypt completely

[497] Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*.
[498] Fauchille cited in Frederik Dhondt and Sebastiaan Vandenbogaerde, "The Neutralities of Belgium, the Congo Free State and the Belgian Congo (1855-1914) Seen through the Journal Des Tribunaux," *JOURNAL OF BELGIAN HISTORY-REVUE BELGE D HISTOIRE CONTEMPORAINE-BELGISCH TIJDSCHRIFT VOOR NIEUWSTE GESCHIEDENIS* 48, no. 1–2 (n.d.): 20.
[499] Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*.
[500] Keal, *Unspoken Rules and Superpower Dominance*, 16.

from the Ottoman empire. [501] The strategic significance of Egypt for the Great Powers was seen through a similar lens as that of Belgium and Switzerland, in the sense that these states were supposed to serve as buffers between the Great Powers. Although in the context of non-European states this separation was articulated as a means of dividing the 'spheres of influence' between the competing Great Powers. As Westlake pointed out, 'spheres of influence result[ed] from mutual agreements of abstention made by two or more powers'.[502] Introduction of this term was perceived to be a 'new departure in the vocabulary of diplomacy' with various practical implications. It was seen either as 'one of the rules in the great game of colonial aggrandisement', later as 'a new and hopeful expedient in the interest of peace', or simply as a tool for acquisition of 'vast territories which were not able to occupy effectively at once'.[503]

Different aims of the spheres of influence were contemplated by authors. For Lenin and Hobson spheres of influence were integral to the struggle over securing markets and separating the world into economic territory, regardless of whether this culminated into creation of colonies on these territories. Others, on the other hand, have noted that like colonies, creation of spheres of influence came to be seen by some statesmen as an integral part of Great Power status, and their acquisition was perceived to lead to an 'increase' in this status.[504] Although pursued with different goals, spheres of influence became an integral part of the vocabulary of the Great Powers through which they sought to delimit their claims over non-European territories.

In the scheme of the pursuit of spheres of influence by the British, the importance of Egypt consisted of its geographical location on the 'political chessboard', being located between the 'spheres of influence' of major European powers, at the 'vulnerable frontiers' of powerful neighbours.[505] The metaphor of a political chessboard was symbolic of the way these states were seen, as pawns - the weakest chess piece on the board - in the game among the Great Powers that needed to be mastered. Although it never materialised, conditional consent was given by France as well as England and this neutralization of Egypt was considered for a while, before becoming 'a veiled protectorate' of England and part of its sphere of influence. Ultimately, protectorates were opted for as a more appropriate measure for securing these

[501] Edward Dicet, "Lord Northbrook's Mission," in *The Nineteenth Century. A Monthly Review*, ed. James Knowles, vol. XVI. (London: Kegan Paul, Trench, & Co, 1 Pternoster Square, 1884), 845.
[502] Westlake cited in Keal, *Unspoken Rules and Superpower Dominance*, 18.
[503] Keal, 16.
[504] Keal, *Unspoken Rules and Superpower Dominance*.
[505] Alfred Lyall, "Frontiers and Protectorates," in *The Nineteenth Century. A Monthly Review*, ed. James Knowles, vol. XXX, 1891.

countries from ‘intruders’. Neutralization was reserved for European states only, as Alfred Lyall, a long standing British civil servant in India stated, it was ‘a European method of dealing with a country that is too weak to stand by itself’.[506]

Similar conclusion about the application of neutralization was made as the so-called ‘Great Game’ for Afghanistan unfolded in Central Asia where the imperial rivalry between Britain and Russia took place. So, when Lyall asked the question why not ‘adopt the European method of dealing with a country that is too weak to stand by itself”, the answer was an explicit no. Afghanistan could not be neutralized like Belgium or Switzerland ‘through a joint agreement to respect its integrity and independence’. [507] According to him, this method of statecraft ‘has never been practical’ in Asia and it would lead to ‘intolerable disorder’ and ‘dilapidation’ in the ‘ill-governed Oriental kingdom’, kept as a neutral ground wedged between two European powers. [508] The local ruler, he argued, would not be capable of upholding impartiality:

> The native ruler would be distracted by the conflicting demands and admonitions of two formidable and jealous neighbours; he would listen alternately to one or the other, and would be constantly giving cause of offence to both; he would find himself between the upper and nether millstone; and his end would probably be as the end of Poland, which became a focus of intrigue and anarchy, and was finally broken up by partition.[509]

Neutralization according to his view, could not be imposed on the states which are not capable of governing themselves according to European standards and keeping an impartial attitude, which would eventually give way to an anarchy and disorder. They were not readily admissible to the European Family of Nations. Neutralization which would imply granting a degree of independence to these states was seen as unacceptable; setting up a protectorate was therefore the ideal solution here. In both cases, neutralization took a different form than as observed in Congo. While in Congo it took a political form, a means of re-creating a European order on non-European territories, in this context it took on the legal form which was redefined as a means of separating the colonial powers’ spheres of influence.

[506] Lyall, 430.
[507] Lyall, 430.
[508] Lyall, 430.
[509] Lyall, 430–31.

The Forerunners of Bandung

At the turn of the century, however, voices emerged from outside of Europe giving neutralization yet another different meaning that challenged this use of neutrality that rendered non-European peoples as non-sovereigns and incapable of any agency. Neutralization was then once again articulated as a political position on behalf of the non-European populations and their right to independence and their own way of development. US advocates against imperialism, critical of colonial practices, argued that neutralization 'might have been beneficently applied to Egypt, Korea, the Balkan States, Persia, and various weaker peoples, whose nationality has been destroyed by arrangements made in trades and acquiesced by the greater nations to satisfy greed and ambition or to preserve the balance of power'.[510] Inspired by the European peace movements these activists saw the emancipatory potential of neutralization when applied to the countries targeted by European imperialism.

Neutralization was rearticulated as an alternative to the imperial policy of the US by the activists of the Anti-Imperialist League, while being part of the broader debate about the identity of the US as an empire. The League was established in Boston in 1898, and its immediate goal was to prevent the ratification of the Paris peace treaty between the United States and Spain in 1898, which effectively ended the Spanish-American war and granted ownership of Philippines to the United States for the sum of twenty million dollars. The League was founded by the Northeastern republicans during the presidency of William McKinley, becoming the most influential public organisation opposing his foreign policy towards Latin American states.[511] The US assertions to ownership of the archipelago based on conquest or purchase were dismissed as being 'inconsistent with the principles of Republic, and fraught with danger to its peace and the peace of the world', the secretary of the League, Erving Winslow argued.[512] Combining his peace agenda with emancipatory goals, neutralization was also presented as both, a way to achieve peace and exporting the principles of freedom and independence to societies that were otherwise deemed as 'uncivilised' and 'undeveloped'.

Winslow published a number of pamphlets and articles, which drew inspiration from the Scandinavian peace movements, arguing to apply neutralization to 'undeveloped nations, the people of the East and of the tropical countries' as a way to achieve the 'perpetual peace'.[513]

[510] Erving Winslow, "Neutralization. America's Opportunity," *World Peace Foundation*, Pamphlet Series, 3 (1912): 3.
[511] Robert David Johnson, *The Peace Progressives and American Foreign Relations* (Cambridge, Massachusetts; London, England: Harvad University Press, 1995).
[512] Erving Winslow, "Address Adopted by the Anti-Imperialist League," February 10, 1989, https://archive.org/details/AddressOfTheAnti-imperialistLeague.
[513] Winslow, "Neutralization. America's Opportunity," 12.

Just like the earlier peace activists Winslow believed that the expansion of neutralizations would eventually eliminate the possibilities of war, an agenda which would later on be taken over by liberal internationalists through international organisations**.** 'The greater the number of neutralized states the more remote in a geometrical ratio become the possibilities of war', argued Winslow. [514] He saw a greater potential for neutralization in terms of its capacity as a vehicle for ushering a new type of order globally, that would include non-European societies in a way that would allow them to preserve their independence. In the order he imagined, there would be a 'permanent comity of nations to maintain the peace, at least in neutralized territories', an association of the neutralising powers, which would be obliged to adhere to the contract that preserves the integrity of the neutralized territory, unless it has been decided otherwise by a general consent.[515] These ideas resemble the system established at Vienna, although applied globally, with more agency granted to the neutralized states.

Inclusion of the 'undeveloped' nations in this system was of particular importance and neutralization was articulated as a means of 'setting the Filipino people upon their feet, free and independent'.[516] National consciousness among these peoples, he argued, 'is awakening through the general progress of enlightenment, and especially under the impulse which has followed the entrance of Japan among the world powers'.[517] Acceptance of Japan into the Family of Nations allowed the anti-imperialists to argue that that other societies could also achieve this level of 'development'. Contrary to the earlier civilising discourse of the European jurists, Winslow claimed that non-European peoples were capable of achieving the level of development by themselves and thus did not need to be part of an American (or European) empire to achieve progress.

The discussions of neutralization at the turn of the century concerning its peace potential ultimately did not come to fruition and no permanent committee of neutralizing powers was established and neither were most of the countries neutralized. The ideas linked to neutrality as pacifism or elimination of conflicts through international organisations which emerged as a result of the contestations taking place towards the end of the century continued to play role and were reappropriated in a new peace project after the First World War, now under the umbrella of a universal organisation. What followed were discussions about the very possibility of neutrality and its compatibility with the new order liberal internationalists envisaged.

[514] Winslow, 11.
[515] Winslow, 11.
[516] Winslow, 20.
[517] Winslow, 12.

5. Twenty Years' Crisis of Neutrality

Even prior to the end of the First World War, calls for abolishment of neutrality and predictions of its demise were voiced in the context of the construction of a new post-war order that was to be based on a universal progress towards the formation of an international organization. This vision of order sentenced pre-war institutions such as war or neutrality to disappearance, and the idea of neutrality and by the same token also neutralization came to be seen 'in crisis'. While the persistence and even expansion of neutrality treaties during this period led to modifications of the legal form of neutrality, aligning it with goals of the international organisation to outlaw wars, it was also strongly contested in the unfolding ideological struggles. Neutrality and non-aggression pacts were introduced by the Soviet and German governments as alternative peace projects, and neutrality acquired a new political form, as both actors tried to shift the norms of international order in line with their ideologies. By the late 30s, confusion about the rules of neutrality led scholars and experts to rehabilitate and rearticulate the strategic views of neutrality as an individual state decision based on their security and economic interests, turning it into a 'policy' option.

Neutrality against the machinery of justice and order

Following the end of the First World War a new discourse of order emerged that questioned neutrality's relevance in the contemporary and future order. Neutrality was deemed by some as redundant, not only because it did not offer protection during the First World War but mainly because it was seen as incompatible with the new visions of the international order centred around the idea of a highly organised community of states with a universal peace mission based on the principle of collective security, which was to be institutionalised through the League of Nations. This new discourse of order effectively rendered the dominant legal form of neutrality institutionalised in the 19th century to be impossible.

This new organisation was supposed to be an alternative to the old balance of power system, with its structure and scope based on the European peace movements of the nineteenth century.[518] It was intended to take over the peace mission claimed by the Scandinavian neutrals associated with the ethico-normative form of neutrality that served to reconcile the conflicts

[518] Stella Ghervas, *Conquering Peace: From the Enlightenment to the European Union* (Cambridge, Massachusetts: Harvard University Press, 2021).

among the great powers. This international organisation was to become an 'impartial helper, mediator and counsellor of the nations bleeding everywhere'.[519] The balance of power mechanism was then supposed to be replaced by a system of collective security, in which the responsibility for the stability of the order was to be shared equally by all states, rather than the great powers only.

Already prior to the end of the WWI, at the annual meeting of the American Society of International Law in 1917, Henri La Fontaine, the president of the International Peace Bureau asked the questions: 'what should be the position of League of states or a Society of Nations with respect to the questions of neutrality and neutralization in the future? Is neutrality and neutralization to [be] considered in the future a practicable and reasonable procedure?'[520] La Fontaine answered the question in the negative. It was not merely because neutrality and neutralization did not bring the advantages they were supposed to during the First World War, he noted, referring to the lack of French and English help in the face of German invasion. Its lack of feasibility and desirability was related to the envisaged mission of the League of States which would be organised for the purpose of 'maintaining justice and law and order' and 'when the *community* of nations stands for the maintenance of law, there can be no more neutrals'.[521] Similar ideas could be found in the work of Aaron J. Jacobs who, as the title *Neutrality versus Justice* hinted at, argued that eliminating neutrality was a matter of justice. 'The policy of neutrality, hitherto sacred to militarists and pacifists alike, is utterly incompatible with international justice or permanent international peace', he argued.[522] In line with the ideas of La Fontaine or Jacobs, the Council of the League declared in 1920 that 'the idea of neutrality of members of the League of Nations is not compatible with the other principle that all the members of the League will have to act in common to cause their covenants to be respected'.[523]

The new order of justice and law envisaged by Jacobs rested on the principle of mutual protection and collective action, presupposing a unity of the administrative body. Jacobs held justice to be an administrative task, which would be shared by all members, as the power of enforcing law was 'derived from the community as a whole, each individual member, by helping to maintain a body of police, shares the duty of protecting any other member against

[519] Dr Alfred H Fried, "POLICE FORCE OR MORAL FORCE FOR THE LEAGUE OF NATIONS?," *Advocate of Peace through Justice* 83, no. 1 (January 1921): 14.
[520] Henri La Fontaine, "THE NEUTRALIZATION OF STATES IN THE SCHEME OF INTERNATIONAL ORGANIZATION," *Proceedings of the American Society of International Law at Its Annual Meeting* 11 (April 26, 1917): 127.
[521] La Fontaine, 130.
[522] Alan T. Jacobs, *Neutrality Versus Justice, An Essay on International Relations* (London: T. FISHERR UNWIN LTD. ADELPHI TERRACE, 1917), 47.
[523] Philip C. Jessup, "The Birth, Death and Reincarnation of Neutrality," *American Journal of International Law* 26, no. 4 (October 1932): 792, https://doi.org/10.2307/2189585.

violence or injustice'.[524] Therefore, states all shared equally in the policing duty. The legitimacy of the administrative body rested on the professionalism and education of its experet staff, which according to Foucault was at the heart of the 'institution of police'.[525] The police were a fundamentally administrative body, that eliminated politics from its day-to-day functioning and drew its legitimacy from professionalism and education. [526] The order based on international organisation, likewise was supposed to replace politics with the professionalism of the League which was supposed to have a role of the 'proved and experienced physician' to whom nations would turn to.[527]

The functioning of this system was often compared to that of a well-functioning machine, whose ultimate aim was to end all wars. For instance, the Norwegian explorer and diplomat Fridtjof Nansens stated in his Nobel prize speech that the League was 'part of the machinery of world control' that would put an end to wars. Or as the US Secretary of State Stimson would put it, it was 'a machinery for ironing out inequalities'.[528] The technological development was so rapid that man's wisdom and self-control could not keep up and the new class of educated professionals controlling this machinery would prevent future disasters, Stimson claimed. The success of this new experiment, according to him, depended on 'man's powers of enlightened realism, his power to interpret developing facts and his constructive ability to devise appropriate machinery to meet new situations'.[529] The analogy of a well-functioning machine expressed the idea of how automatic and dispassionately the decisions that would normally be a matter of political debate would be done by the members of the organisation.

Furthermore, it was not just the League, the various arbitration treaties, The Geneva Protocol, the Locarno treaties, and the World Court were also seen as examples of this machinery. According to Stimson, they were 'the safety valves of the collective movement'.[530] The advantage of a well-functioning machinery staffed by bureaucrats was its the lack of passions and negative feelings, as La Fontaine clarified:

> The officer of the law […] is not a warring soldier; he is representing the administrative force of the law of the community; he does not entertain any

[524] Jacobs, *Neutrality Versus Justice, An Essay on International Relations*, 10–11.
[525] Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78*, ed. Michel Senellart, François Ewald, and Alessandro Fontana (Basingstoke ; New York: Palgrave Macmillan : République Française, 2007), 420.
[526] *Foucault, 46.*
[527] Fried, "POLICE FORCE OR MORAL FORCE FOR THE LEAGUE OF NATIONS?," 14.
[528] Henry L. Stimson, "Neutrality and War Prevention," *Proceedings of the American Society of International Law at Its Annual Meeting* 29 (1935): 124, https://doi.org/10.1017/S0272503700039938.
[529] Stimson, 125.
[530] Stimson, 124.

> feeling of hatred for the man he is pursuing, and the whole spirit which actuates him is very different from that which actuates the soldier. He is merely resorting to a measure of protection in the interest of the and no more, and the spirit of conquest, the spirit of competition, and the spirit of hatred are not in him […].[531]

Wars and soldiers were thus associated with 'spirits' such as hatred, competition, and conquest, while the policeman, on the other hand, was merely performing his administrative duty of punishment for the sake of protecting the interests of the community. Violence thus became an administrative task and was depoliticised.

La Fontaine, like many other liberal internationalists adopted a radical view that wars should be outlawed, and the language of criminal law was introduced to this job on the level of concepts. The legal treatises no longer focused on how to alleviate the impact of wars and limit the scope of the war but how to prevent certain types of wars, by introducing concepts such as aggression. International order would be maintained by those who conform to and enforce the law, while the aggressors who needed to be punished were condemned. There could be no more morally equal belligerents. The new vision of international law condemned the 'old' institutions of international society and neutrality to the sphere of 'illegality'. As Kirsten Sellars noted, certain categories of wars were delegitimised and the treaties proposed in the 1920s and 1930s put emphasis on 'the unlawfulness of wars other than those of self-defence or international sanction', with some of the unratified resolutions and drafts going as far as proclaiming aggression as an 'international crime'.[532]

This idea of outlawing wars went hand in hand with efforts to tackle disarmament as various committees were established with this aim. A significant effort to 'close the gap' in the Covenant was the Protocol for the Pacific Settlement of International Disputes (the Geneva Protocol), aimed at rendering the broader categories of war unlawful and making arbitration and judicial settlement obligatory. However, as the Geneva protocol proposing 'automatic and objective method for the presumption of aggressor if the state failed to agree to settlement' was shot down by the British, less expansive options were proposed.[533] A number of bilateral non-aggression treaties addressing the frontiers of Germany were then signed at Locarno.[534] And three years later, the Kellog-Briand Pact was to compensate for the fact that the major founding power of the League, the United States, decided not to join it.[535] States conducting war were

[531] La Fontaine, "THE NEUTRALIZATION OF STATES IN THE SCHEME OF INTERNATIONAL ORGANIZATION," 129–30.
[532] Kirsten Sellars, *"Crimes Against Peace" and International Law* (Cambridge University Press, 2013), 2.
[533] Sellars, 21.
[534] Sellars, *"Crimes Against Peace" and International Law*.
[535] Ghervas, *Conquering Peace*.

deemed to be 'aggressors', and with wars being considered as 'illegal', the legal form of neutrality, the meaning of which was derived through the counter-concept of war was seen as redundant. Without a legal state of war, there were no rights and duties for the neutrals. The ethico-normative form of neutrality was also effectively redundant as the League was seen as the ultimate peace machine, effectively absorbing what was previously seen as the specific mission of neutrals. This discourse thus presupposed the death, or disappearance of the concept of neutrality, which however did not take place, as will be shown later.

Overcoming Anarchy

Anarchy became the defining other of the order based on international organisation. The idea of international anarchy gained traction particularly after the WWI and was popular in justifying elimination of the 19th century institutions of international law, and especially that of neutrality, which was seen as a direct threat to collective action through the League as multiple states failed to participate in the sanctions. As Kunz noted, Japan's invasion of Manchuria shattered the 'illusion' of collective security in Asia, Africa, and South America and afterwards in Europe. In fact, on many occasions during the interwar period, small and great powers alike adopted neutrality and abstained from implementing the sanctions of the League, while many international treaties featuring neutrality were concluded.[536] Jessup also noted, 'Germany, Austria, Czechoslovakia, Italy, Jugoslavia and Lithuania, have concluded treaties by which they agreed to remain 'neutral' in certain circumstances'.[537] And most notably, the US adopted several neutrality acts between 1935 and 1939 that imposed embargoes on its own citizens. Despite discursive efforts to fix the meaning of neutrality as redundant and incompatible, its practice continued.

It was argued that the continuous presence of neutrality was due to the famous 'gap' in the covenant which did not completely 'outlaw' war. However, this gap was also symptomatic of the confusion that was present regarding the rules of neutrality and legitimacy of the order based on international organisation. The construction of 'international anarchy' was deployed by liberal internationalists such as Nicholas Politis to de-legitimise the institution of neutrality and make its adoption implausible. The term international anarchy can be traced back to Lowes

[536] Josef L. Kunz, "The Covenant of the League of Nations and Neutrality," *Proceedings of the American Society of International Law at Its Annual Meeting* 29 (1935): 36–42, https://doi.org/10.1017/S0272503700039859.
[537] Philip C. Jessup, "The Birth, Death and Reincarnation of Neutrality," *American Journal of International Law* 26, no. 4 (October 1932): 789–93, https://doi.org/10.2307/2189585.

Dickinson's updated and expanded study of pre-war diplomacy published in 1926 under the title *The European Anarchy*. As Lucian Ashworth pointed out, this work 'gave a name to a concept that formed the backbone to the pre-war analyses of the international' such as those of Norman Angel and Henry N. Brailsford.[538] For Dickinson, the international anarchy was not natural but a product of a certain period and therefore the answer lay in creating a new system to replace it. International anarchy was deployed in juxtaposition to the ideal of a well-functioning machinery that would settle disputes and reconcile conflicting interests of states under a common purpose, which would be backed by force. It would be a 'real and effective counterpoise to aggression from any Power in the future'.[539]

This discourse of order was based on a linear narrative of a progression from anarchy to a 'pacific organization of the world' in which the meaning of neutrality could only be archaic or destined to disappear. This was perhaps best illustrated in 1935 by Politis, a prominent Greek lawyer and the President of the Assembly of the League of Nations, who urged the US to join the League and abandon its 'egoistic' policy of neutrality. In this progressive view of the order, neutrality, like war, was seen as a product of international anarchy. If law and order were enforced by the 'international policeman' punishing the aggressors, war could no longer be seen as a means of enforcing law as well. The idea of anarchy was thus incompatible with war as an institution constituting a legal process and a means of settling differences. International anarchy was characterised by Politis as:

> a world where States pretended to exercise, without the slightest control, an unlimited sovereign power; where they had the absolute right of making war; where they knew no regular system of justice; where the inter-dependence of their interests could only be conceived as an academic question; and where, finally, the community composed of States was devoid of all organization.[540]

This anarchy was then presented as a past that had been almost overcome, the other against which the future vision of the international was constructed. Although international anarchy had not yet completely disappeared, Politis argued it was no longer 'the dominant trait'. Neutrality was therefore a 'true anachronism; irrevocably doomed; […] destined to disappear'.[541]

[538] Lucian Ashworth, *A History of International Thought*, 0 ed. (Routledge, 2014), 122, https://doi.org/10.4324/9781315772394.
[539] Dickinson in Ashworth, 123.
[540] Nicolas Politis, *Neutrality and Peace*, Pamphlet No. 55 (Washington: Carnegie Endowment for International Peace, 1935), xiii.
[541] Politis, xiii.

This view was not limited to the European internationalists. Similar views could be also found in US academia prior to the Second World War. As Koskenniemi noted, out of twenty-four professors of international relations, eighteen taught international law and organisation.[542] For instance, according to the professor John B. Whitton, neutrality was part of the primitive stage of law that was defined by self-help prevalence. In his words, nations existed 'in a state of nature, their mutual relations governed, not so much by norms of human conduct as those natural laws which control the shock of physical force'.[543] Not only was neutrality represented as a backward institution, the American jurist Charles G. Fenwick similarly argued, it was immoral and disagreeable with the new order built around a world organisation and the associated idea of collective security. Fenwick specifically aimed this criticism against the US which adopted several neutrality treaties between 1935 and 1939, which favoured certain countries with powerful naval fleets capable of purchasing materials from the US. According to Fenwick, the US neutrality was equal to 'washing the hands of responsibility' in international affairs.[544] Law and order were challenged by anarchy and the US could not stand idle in the face of this new challenge. The solution lay in the ideal of collective security, after all, one could not be neutral 'in the presence of a crime' akin to neighbour's house being robbed or when a child is being kidnapped.[545]

A more moderate assessment about the existence of neutrality in the next stage of development of international relations was offered by the Austrian jurist Josef Kunz. Like Politis, he argued that the League represented a higher stage of development from the primitive family of nations in which war was legal. This new stage of development represented by a 'highly organized international community' was an ideal that was not achieved yet but was a necessary precondition for the disappearance of war, and hence also of neutrality.[546] Kunz then proceeded to analyse whether neutrality was compatible with the Covenant, coming to a less radical conclusion than Politis or La Fontaine, claiming that 'there is an ample room left for neutrality'.[547] As long as the wars were legal, neutrality remained available for both, the members and non-members of the League. For Kunz, the League and neutrality could be and were complementary – many of the international treaties concluded after the establishment of the League were 'to a large extent, based on the continuance of the status and law of neutrality'

[542] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[543] John B. Whitton, "The Changed Attitude of the Powers Toward Neutrality Laws," *Current History* 30, no. 3 (June 1, 1929): 455, https://doi.org/10.1525/curh.1929.30.3.454.
[544] Charles G. Fenwick, "Neutrality and International Responsibility," *The ANNALS of the American Academy of Political and Social Science* 192, no. 1 (July 1937): 54, https://doi.org/10.1177/000271623719200109.
[545] Fenwick, 53.
[546] Kunz, "The Covenant of the League of Nations and Neutrality," 37.
[547] Kunz, 38.

and many of the participants were members of the League, as he pointed out'.[548] For Kunz, the question of relevance of neutrality depended on which vision of international order would prevail. If the anarchy of the 19th century was to prevail, there was still use for the old concept of neutrality, and if the international organisation is to continue progressing 'something more than reshaping of the old law of neutrality must be undertaken', Kunz concluded.[549] The world was thus seen as between regression to anarchy and progression towards the world organisation, which then would decide whether neutrality would be absolved by these institutions or would remain in use as a necessary institution for limiting warfare. The complementarity of neutrality and the international organisation was evidenced in attempts to change the meaning of neutrality that would make it less 'exclusive' reverting back to the older legal conceptualisations from natural law of nations that allowed its imperfect status.

Compromising impartiality

Although there had been a number of scholars, such as Carl Schmitt, claiming that the League and other instruments revived the secular or other type of late medieval and early modern traditions of just war, which were incompatible with the concept of neutrality, Kirsten Sellars noted that this was not exactly the case. While classical advocates of just war doctrines tried to justify particular types of wars as a way of delivering justice, the intention of the authors of the Covenant, Sellars argued, was to delegitimise wars that had been waged without exhaustion of prior attempts at pacific remedies.[550] Ultimately the process of delegitimization of neutrality failed and instead 'allowed new ideas to coexist with old assumptions and provided the interpretive space for an oscillation between the two'.[551] Neutrality was in fact a good example of how this process of delegitimization of war failed. Despite the discursive work put in place by the internationalists, neutrality did not disappear and with the increased perception of the dysfunctionality of the League, neutrality very much stayed present and was re-articulated in order to reconcile it with the vision of the order based on international organisation as well as to challenge it. What was dubbed as 'the crisis' of neutrality[552] reflected confusion about the new notions of neutrality put forward by various actors which relied on different ideas about

[548] Kunz, 40.
[549] Kunz, 44.
[550] Sellars, *"Crimes Against Peace" and International Law*, 11–14.
[551] Sellars, 15–16.
[552] Kunz, "The Covenant of the League of Nations and Neutrality," 36.

international order and the rules that should guide the institution of neutrality, as well as the disagreements about the very nature of neutrality which was contested during this period.

One way of making the legal form of neutrality complementary to the order based on international organisation was by fragmenting and limiting the scope of the concept. Already prior to the 'revival' of neutrality, fragmentation of the concept, which sat uncomfortably with claims of international justice by the League and the efforts to outlaw war, began. This initiative came from states that were considered to be the 'traditional neutrals' and which were reluctant to fully give up their status as permanently neutral states. A well-known example of this was the so-called 'differential neutrality' of Switzerland, which allowed the Swiss to distinguish between economic and military neutrality, and thus to limit the scope of their obligations towards the collective action. The so-called declaration of London by the Council of the League recognised the unique situation of Switzerland which was not 'obliged to take part in any military action or to allow the passage of foreign troops or the preparation of military operations within her territory'.[553] This modification of neutrality would thus entail impartiality in military affairs and 'partiality' in economic matters. Switzerland was thus bound to participate in the League's military sanctions.

This kind of 'qualified neutrality' was a return to the conception of neutrality from seventeenth century natural law and was similar the so-called 'limited neutrality' that could be found in natural law texts such as those of Johann Wolfgang Textor.[554]This type of neutrality allowed providing aid to one of the belligerents, to an extent established in the treaty, because of an obligation established via contract prior to the war where the neutral's partiality towards the belligerents was to a certain extent accepted. In the case of Switzerland, impartiality was compromised regarding economic sanctions, participation in which was mandated by its membership in the League of Nations. This neutrality would thus be partially regulated according to the old rules of European law which accepted war as an institution, and partially according to the new international law based on international organisation. It implied specific rights and duties for Switzerland based on the l9th century law in which neutrality served as a means of limiting the scale of violence and localising wars, while at the same time, neutrals shared the duties with other members of the League to punish the transgressors by economic means.

A different way of bypassing the problem of compatibility of neutrality with the international organisation was its complete re-interpretation, as the concept of 'Neo-neutrality'

[553] Michael M. Gunter, "Switzerland and the United Nations," *International Organization* 30, no. 1 (1976): 132.
[554] Johann Wolfgang Textor, *Synopsis of the Law of Nations*.

developed by the Danish scholar Georg Cohn did. This new concept of neutrality intended to disrupt the link between the concepts of war and neutrality, thus moving away from the idea that neutrality should serve as an institution of limiting warfare.[555] Cohn was careful to distinguish neo-neutrality from Descamps' idea of 'pacigérat' and the notion of pacifism popular among the earlier promoters of neutralization as a part of the peace program in Europe. The problem with Descamps' notion of pacigérat, which although also highlighting the 'positive' side of neutrality, was that it was derived from the concept of war.[556] Neo-neutrality according to Cohn implied that the neutral took a 'fundamental exception to the whole conception of war'.[557] This was the key feature that distinguished it from traditional neutrality. As he elaborated:

> Traditional neutrality took a dependent and passive attitude toward war. It was oriented by war. Neo-neutrality, on the other hand, is based on an equal devaluation of the war in all cases; it does not seek its own raison d'être in reflections as to whether it has in one situation or another a moral or legal claim to assert its nonparticipation as a right; it takes an exception in principle to participation in war in any form. It does not recognize the supremacy of the law of war; it replaces it instead with a system of combined sanctions and neutrality which centers about an effort to suppress and prevent war of every kind.[558]

Neo-neutrality aligned its functions with those of the international organisation, and the two were seen as complementary. It complemented the League's sanctions, while sharing the same goal of war prevention, rather than war limitation. Unlike the Swiss differential neutrality, 'neo-neutral' states did not recognise *any* obligation of impartiality. The concept was thus also distinguished from the pacifism associated with the earlier Danish neutralization movement in the sense that it took 'a very active and *aggressive* position', and any military or other compulsory measures were allowed for the sake of war prevention, aside from participating in wars.[559] Neutrals thus could and were obliged to 'punish', which seen as distinct from engaging in war, and in line with the language of criminal law used to justify the new conception of law. What Cohn attempted was thus to harmonise the concept with the language of internationalists, while abandoning the previous function of neutrality. The only compatible conception of neutrality was the one that shared the basic goals and functions of the international

[555] Georg Cohn, *Neo-Neutrality* (New York: Columbia University Press, 1939).
[556] Cohn, 34.
[557] Cohn, 321.
[558] Cohn, 253.
[559] Cohn, *Neo-Neutrality*.

organisations and entailed a complete identification with their mission of the League, while not endorsing collective security.

Despite the initial proclamations of the death of neutrality and efforts to outlaw it, neutrality treaties in fact kept flourishing. This was not the case only because of the US refusal to join the League and adopting neutrality, but also other actors who never accepted the ideology of the League and tried to introduce alternative peace programs based on neutrality. What soon emerged were rearticulations of neutrality by the Soviet Union and Germany as political forms drawing on the modified legal form of neutrality.

Neutrality and the Soviet peace project

The link between neutrality and war prevention would also be rearticulated in the Soviet conceptualisation of neutrality that sought to challenge the order based on Western norms. The newly established Soviet Union rejected participation at the League of Nations which it saw as an 'executive of organ of some imperialistic powers which were victorious in the World War and are striving to preserve and utilise the privileged position created for them by the peace treaties'. [560] The League was seen to be systematically carrying out the interests of these powers under 'the pretense of a preservation of the universal peace and justice'.[561] The Soviet Union thus presented its own vision of universal peace in which neutrality played a prominent role. Neutrality and non-aggression treaties of the Soviet Union emerged as a means of providing alternative security arrangements by drawing on the language of criminal law used by liberal internationalists, while this neutrality was also articulated in light of the Soviet mission of peace as an ethico-normative position.

Initially the Soviet attitude towards international law involved complete denial of the validity of earlier treaties made by the Russian empire. As Trotsky declared in 1917: 'There exists for us only one unwritten but sacred treaty, the treaty of the international solidarity of the proletariat'.[562] The earlier treaties made by the Russian Empire were repudiated, and their validity rejected on the grounds of differences between two very distinct social orders, as David Armstrong noted. In much the same way as the international organisation failed to materialise, the world revolution also failed to come. According to Armstrong, the Soviets were thus forced

[560] Max M. Laserson, "The Development of Soviet Foreign Policy in Europe, 1917-1942: A Selection of Documents," *International Conciliation* 21 (1943): 5.
[561] Laserson, 5.
[562] Trotsky in David Armstrong, "Norms, Rules, and Laws," in *Revolution and World Order*, by David Armstrong, 1st ed. (Oxford University PressOxford, 1993), 227, https://doi.org/10.1093/0198275285.003.0007.

to seek a solid basis in treaties, in order to form diplomatic and commercial relations with the other system and came up with different justifications for rejecting obligations associated with earlier treaties based on 'fundamental change in circumstances' – that is, the revolution. The Soviet lawyers claimed that this practice was grounded in existing law of prior revolutionary states that 'succeeded in forcing the acceptance of a new doctrine in international law, and that the Soviet state was part of a continuous tradition created by the revolutionary states.'[563]

The Bolshevik notion of international law did not subscribe to the common conception of the international law formed in the 19th century and rejected its universality. In international legal theory, the break with Europe and the idea of European-defined universal international law was declared by Yevgeni Korovin and Yevgeni Pashukanis in the early 1920s. Korovin claimed that the 'universal' or 'global' international law was a myth, and in reality, it encompassed only a small circle of European powers, the Great Powers in particular.[564] This, to a certain extent, mirrored the view of the Soviet government towards the League. Korovin would posit that there actually existed a plurality of legal systems and the idea of Soviet international law 'or international law of the transitory period as one of the special systems of international law' would be theoretically feasible.[565] The Soviet thinkers then proceeded to embed the law within the Marxist-Leninst doctrine, defining it as part of the 'superstructure' based on specific set of economic relations. Therefore, socialist and capitalist relations would engender two different types of law and the conceptualisation of one law common to two systems was a logical paradox. Regarding law as an actual institution supporting social order was a bourgeois fallacy. Given that the basic feature of the relationship between capitalism and socialism was struggle, where one was bound to supplant the other, rules for promotion of their coexistence and cooperation were meaningless.[566]

As the complete break with the previous legal system did not take place the Soviets also found it convenient to ground their diplomacy in the existing treaties. The acceptance of 'bourgeois' principles however needed to be somehow reconciled with the Marxist-Leninist ideology and Yevgeni Korovin attempted this by introducing the idea of interim or transition phase from capitalism to socialism, during which it was necessary to have a new framework of international law. It was possible to create a partial community of interest in economic areas and with respect to a number of restricted norms and values he considered to be classless and

[563] Armstrong, 228.
[564] L. Mälksoo, "The History of International Legal Theory in Russia: A Civilizational Dialogue with Europe," *European Journal of International Law* 19, no. 1 (February 1, 2008): 211–32, https://doi.org/10.1093/ejil/chn005.
[565] Mälksoo, 226.
[566] David Armstrong, "Norms, Rules, and Laws," in *Revolution and World Order*, by David Armstrong, 1st ed. (Oxford University Press Oxford, 1993), 199–243, https://doi.org/10.1093/0198275285.003.0007.

eternal.[567] The new legal order would then construct 'a bridge between the bourgeois and socialist halves of humanity'.[568] Furthermore, as Armstrong argued, the Soviets posed themselves in the 1930s as the 'leading champions of international law and order' and the Soviet legal theorists would provide legal justifications for the Soviet foreign policy shifts.[569] The existence of neutrality treaties was thus seen as a transitory phase to the new order, similarly to how Kunz argued that neutrality would be present to the extent that the new order would be accepted.

Between 1917 and 1922 more than 250 treaties and agreements were signed between the Soviet Union and other states, as the Soviets found them to be a useful means for not only defining their relations with other states, but also for grounding their action in a legal framework. The soviet legal authorities cited these treaties as 'the most important source of international law.[570] Among these treaties were included those of neutrality and non-aggression. The treaties of neutrality began to be signed as early as 1920 and initially also included attempts to establish the permanent neutrality of Estonia and Lithuania. While permanent neutrality or neutralization guaranteed by the Great Powers disappeared after WWI, as the new order was to be based on equality of states underpinned by the system of collective security and disarmament, it was briefly mobilised by the fledgling Soviet government for the sake of settling its borders with Estonia and Lithuania. The neutrality of the post-imperial Russian subjects was part of peace treaties signed in 1920-1921with Estonia and Lithuania. The treaty of Tartu signed in 1920 contained a provision which stipulated that: 'In the event of international recognition of the permanent neutrality of Estonia, Russia, for its part, undertakes to conform to such neutrality and to participate in the guarantees for maintenance of the same'.[571] This legal form of neutrality, grounded in the earlier order based on the great powers, was not supported by other states, as this understanding of order was already seen as obsolete.

The rejection of the Western model of law was also expressed in the views of neutrality. According to Lenin, Western neutrals were passive self-serving actors that refused to participate in the struggle towards world revolution. They were petty states which were aloof, with a 'petty-bourgeois desire to keep as far away as possible from the great battles of world history, to take advantage of one's relatively monopolistic position in order to remain is

[567] Armstrong, 231.
[568] Armstrong, 231.
[569] Armstrong, 226.
[570] Armstrong, "Norms, Rules, and Laws."
[571] Eero Medijainen, "Article 5: Permanent Neutrality in The Tartu Peace Treaty, 1920," *Journal of Baltic Studies* 41, no. 2 (June 2010): 209, https://doi.org/10.1080/01629771003731739.

hidebound passivity'.[572] Drawing on the earlier meanings of neutrality articulated as a critique of neutral free trade in the 18th century were combined with Marxist-Leninst ideology. In what was later referred to as a fundamental document of the Comintern, Georgi Dimitrov claimed in November 1939 that neutrals were hypocritical 'through and through', and this being the case first of all for the United States as the chief supporters of Japanese imperialism in China. 'Under the flag of neutrality' Dimitrov wrote, 'the American imperialists are inflaming war in the Far East so as to enfeeble Japan and China, and then, basing themselves on their might, to dictate their conditions to the belligerent countries and to establish themselves firmly in China'.[573] In other words, the Americans were seen as profiting from enabling the war through their free trade with Japan in order to later gain market dominance in China. Incorporating now the doctrine of class struggle, neutrality came to be associated with the American bourgeoise which was also seen to be further inflaming the European war by becoming a 'war factory' for France and Great Britain.

In the same vein, neutrality of other 'non-belligerent, capitalist countries' was seen as equally hypocritical because they used 'their neutrality as a commodity with which to haggle, endeavouring to sell it to the highest bidder'.[574] Neutrality was thus presented in the narrow sense of self-interest, there was no added value to it as an international institution. Many of the neutral states, Dimitrov argued, were simply waiting for a good time to take sides with the party that would have higher chances of victory so that they can 'dig their teeth into the vanquished and to tear their share of the booty'.[575] Through the lens of Marxist-Leninst ideology, neutrality was regarded as a 'commodity' - which by its very nature has value only in the relations based on trade and it was seen as a means of supporting the imperialist wars. One could not stay neutral in the struggle of world revolution.

The concept of neutrality however acquired different meanings when it was an initiative of the Soviet Union and underscored its exceptionalism. When adopted by the Soviet state, neutrality turned out to be an 'honest' policy 'dictated by the interests of socialism', that is the interest of working people throughout the world.[576] This was enshrined in the non-aggression pact signed between the Soviet Union and Germany and articulated in the 1940 May Day manifesto in which the Soviet Union's peaceful position of neutrality was contrasted to the 'imperialist war'.

[572] Vladimir Ilych Lenin, "The Military Programme of the Proletarian Revolution: III" (1916), https://www.marxists.org/archive/lenin/works/1916/miliprog/iii.htm.
[573] Dimitrov in Jane Degras, *Communist International: Documents, 1919-1943* (Hoboken: Taylor and Francis, 2014), 450.
[574] Dimitrov in Degras, 450.
[575] Dimitrov in Degras, 49.
[576] Degras, 466.

> [British and French are]… furious because the USSR has secured the benefits of peace for its peoples, is living at peace with Germany, just as it is also desirous of living at peace with other States that do not infringe on its rights. [The Soviet policy] …of honest neutrality, hinders the spreading of military conflagration to other countries. They are overcome with fear at the fact that the peace policy of the USSR is strengthening the urge for peace of their own peoples.[577]

Neutrality pursued by the Soviet Union was defined in terms of limiting and preventing wars, in which the Soviet government held a special role, as the genuine promoter of peace. As Lauri Malksoo pointed out, the Soviet socialist theories of international law were also an expression of the 'Russian idea' maintaining 'that the time had come to define Russia as unique and separate from the decadent liberal Europe'.[578]

Furthermore, neutrality was rearticulated in line with the goals of liberal internationalists – to prevent war, although through a different ideological lens. Throughout the 1920s and 30s, the Soviet government continued to sign a number of neutrality and non-aggression treaties which were to offer an alternative to the system of collective security embodied by the League and the efforts of outlawing wars by the West such as the Locarno Treaties and the Briand-Kellogg pact. The various neutrality pacts made between the USSR and Lithuania, Italy, Germany, etc. provided clauses that stipulated that both signatory parties would have to remain neutral for the duration of the conflict, in case one of the signatories is attacked, and served to create a security system based on non-intervention. These came to be viewed by others as a counterattraction to Locarno in Europe – as a means of creating different security system, as the bulletin published by the Royal Institute of International Affairs stated in 1928. 'Neutrality, Non-aggression and Moscow', the author of the bulleting wrote, were offered as rival attractions to 'Arbitration, Security and Locarno'. [579] Non-aggression and a guarantee of benevolent neutrality to the victim of an unprovoked attack were thus substituted for a promise of active assistance.[580]

Neutrality thus acquired a political form, in the sense that it was seen as means of establishing an alternative order based on Marxist-Leninist doctrines and Russian exceptionalism. While the transition to the new order lasted, neutrality was still seen as possible and desirable. Neutrality and non-aggression treaties were not only popular with the Soviet

[577] Degras, 466.
[578] Mälksoo, "The History of International Legal Theory in Russia," 225.
[579] "The U.S.S.R. System of Neutrality and Non-Aggression," *Bulletin of International News*, New Series, 4, no. 25 (June 9, 1928): 3.
[580] The U.S.S.R. System of Neutrality and Non-Aggression.

Union, active discussions about neutrality as an alternative peace program were taking place also in Germany, which was also seeking alternatives to Locarno grounded in a different ideology.

Neutrality and the National Socialist Order

A challenge to the nascent order of international organisation was also presented by the alternative conception of order based on the national-socialist vision of the 'New Europe' which promoted, among others, the return to the institution of neutrality. As with the Soviets, in German political thought neutrality also acquired a political form and was embedded in the National-Socialist ideology.

One of the most well-known critiques of liberal nomos in German political thought came from the pen of Carl Schmitt. Rather than humanity reaching a higher stage of civilisational development through an international organisation, Schmitt was critical of the developments within the system of international law. As Koskenniemi pointed out, Schmitt saw the law as no longer functioning as a restrainer, but quite the opposite, allowing for extreme measures to be undertaken against the enemy of a mankind. For Schmitt the development of international organisation was equal to imperial expansion marshalled by the 'powers in charge of the decision-making in League organs'.[581] The universalist vision of the League turned it into an empire as per its treatment of the 'third states' which was informed by its internal laws. A crucial component of the emerging new nomos was the concept of collective action, which re-introduced the idea of just war into international law, with the power of determining a just cause being seized by the League Council.[582]

The critique of liberal imperialism was also adopted by other German lawyers with more open national socialist sympathies. The German jurists openly sympathetic to the Nazi regime would use the concepts devised by the liberal internationalists against Nazi the liberal internationalist vision of the order, twisting their established meanings. As John Herz noted, the conception of national socialist international law that emerged during the interwar period included rejection of 'imperialism', 'the right of independence', and endorsement of the idea that peoples possessing 'equal rights' would not pursue expansion of their territories and populations.[583] Alongside this existed also the system based on 'honour', 'mutual respect' or

[581] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, 426.
[582] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.
[583] John H. Herz, "The National Socialist Doctrine of International Law and the Problems of International Organization," *Political Science Quarterly* 54, no. 4 (December 1, 1939): 542, https://doi.org/10.2307/2143443.

'self-preservation'.[584] All these concepts remained indeterminate as Herz argued, except for the right to 'possession of arms' which would legitimise the rearmament of Germany. The real international community would be established, according to the national-socialist authors, by application of these principles, thus producing 'a peaceful, harmonious 'community' of nations, based not on predominance but on equality, and the result, according to one of these authors, [would] be 'a situation of peace and harmonious cooperation such as the world has never known before'.[585]

Rejecting imperialism, National Socialism advocated for equal rights for peoples and minorities and creation of peaceful, harmonious 'community' of nations. All these ostensibly peaceful ideas were however underpinned by a theory of racial hierarchy in which equality was relative to 'the concrete value of the race represented by the states ', that is, their 'natural superiority or inferiority'.[586] By the late 30s, Herz noted, many scholars were wondering and questioning the 'real aims' of German foreign policy, considering the numerous 'peace speeches' that Hitler made. Neutrality was then another such concept, the meaning of which was adjusted to conform to the ideological goals.

The alternative vision of international society that was conceptualised in Germany also included a modified version of the legal form of neutrality, that would uphold this order. Schmitt discussed the transformation of the concept of neutrality and its bisection, which resulted in compromises of impartiality, that he deemed as unacceptable. In his essay *Das Neue Vae Neutris!* Schmitt noted that the concept underwent fundamental change and argued for its irreconcilability with the notion of delivering justice as claimed by the US and the traditional concept of neutrality based on impartiality. Schmitt found it problematic that a third state could impose justice on the belligerents. This state could no longer be called neutral. If a state claimed a right to take part in 'legal and moral-propagandistic discriminations or economic and financial coercive measures' by referring to Article 16 or something else, it was impossible that it could be 'otherwise' neutral, Schmitt argued.[587] He criticised the position of the US, as combining two diametrically opposed views: 'on the one hand, an extremely strict, almost rigorously conceived neutrality in the sense of the traditional, non-discriminatory concept of war, with an impartiality which regards any position in favour of or to the disadvantage of the right of a belligerent party as a breach of duty, indeed almost as a sin under international law

[584] Herz, 542.
[585] Herz, 542.
[586] Herz, 544.
[587] Carl Schmitt, "Das Neue Vae Neutris!," in *Positionen Und Begriffe Im Kampf Mit Weimar-Genf-Versailles 1923-193* (Hamburg: Hanseatische Verlagsanstalt, 1940), 253.

[…], and, on the other hand, the extremely opposite claim to act as arbiter of the right and wrong of war in the name of humanity, democracy, and international law and to usurp the decision'.[588] What he saw as a subversive form of neutrality of the US, was inspiring for other national socialist lawyers.

The German regime advisor Friedrich Berber appeared to be intrigued by the new neutrality policy of the United States that put restrictions on its own citizens, and to describe it he introduced the notion of 'total neutrality' which was seen as the twin concept of Clausewitzian 'total war'. According to Berber, total neutrality 'abolishe[d] the obsolete distinction [between soldier and citizen], which no longer correspond[ed] to the inner nature of the modern people's state, between strict duties of the neutral state and broad liberties of the neutral national'.[589] It made neutrality 'smaller but purer, it renounce[d] a part of the traditional rights of neutrality in order to save the decisive core of neutrality'. [590] Thus in the modern people's state everyone was considered to be a soldier and an organic part of the state as a whole. War was existential. This was in line with the idea of total state, which Carl Schmitt characterised as 'a moment in the effective development of every type of state, marked by the mobilisation of all energies in a certain direction'.[591] In a different essay, Schmitt argued in defence of the German state that every state form is potentially total and in fact 'the totality of a nation or a people's state is first and foremost its own business'.[592] The idea of total state, he later on argued, was a polemical concept he used for describing a 'what had happened to the "neutral state" of the nineteenth century, itself a successor of the "absolute state" of the eighteenth century'.[593] Regardless of his intentions, Michael Hollerich, argued, this kind of 'totalizing language' presented a clear risk of being misused for the political goals of the regime.[594]

The national socialist lawyers encouraged a return to neutrality, combining it with a specific vision of legal positivism based on a new philosophy of state, in which neutrality was supposed to be an alternative to the collective maintenance of peace by sanctions and legal obligations to assist the victim of an aggression. As Berber argued: 'the Geneva system of collective security […was] not the only conceivable system of peacekeeping, and it [was]

[588] Schmitt, 252.
[589] Fritz Berber, "Neutralität und kollektive Sicherheit," *Zeitschrift für Politik* 26 (1936): 364.
[590] Berber, 364.
[591] Simona Draghici, ed., "Neutrality According to International Law and National Totality," in *Four Articles, 1931-1938*, by Carl Schmitt (Washington, D.C.: Plutarch Press, 1999).
[592] Draghici, 39.
[593] Michael Hollerich, "Carl Schmitt," in *The Blackwell Companion to Political Theology*, ed. Peter Scott and William T. Cavanaugh (Oxford, UK: Blackwell Publishing Ltd, 2007), 117, https://doi.org/10.1002/9780470997048.ch9.
[594] Hollerich, "Carl Schmitt."

wrong to portray everything that moves outside of this system as a threat to peace, as a relapse into pre-war politics, as not animated by the right spirit of peace, as imperialistic, militaristic or egoistic'.[595] According to Berber, there were several 'conceivable systems for maintaining the peace' such as dissemination of the system of non-aggression pacts and assistance pacts, or neutrality which could co-exist alongside the Geneva system.[596] Sanctions could be effective only on small states, but in the case of great powers they were 'utterly ineffectively'.[597] This was shown on the example of South American common front of neutrality in the conflict between Paraguay and Bolivia, which was seen as a more effective peace measure than the threat of sanctions. Neutrality in this case was also reconceptualised as an alternative form of peace system, which could co-exist with the League.

As Lawrence Preuss noted, national socialist jurists often turned to legal positivism as a means of disregarding the international legal order embodied by the League and to repudiate the WWI Peace settlement. German positivism, unlike the Anglo-American one, contained a philosophy of the state in which the 'state has an absolute moral value beyond which we cannot go [… and] the validity of international law must necessarily consist in its furtherance of that value'.[598] It is the state which by 'judging whether it should or should not accept as binding a proposed rule of international law, need have regard to its own interests only' [… and] 'in security its own self-interest it is securing, also, the interest of that absolute moral value which it embodies'.[599]

This concept of total neutrality was then also linked to the public opinion by the German jurist and a student of Schmitt, Ernst Hermann Bockhoff. He did so in his article *Complete or half neutrality (Ganze oder halbe Neutralität)* which was a reaction to the criticism of the Swiss press of the developments in the German Reich, that he described as a 'non-neutral attitude'. Bockhoff claimed that neutrality cannot be split between domestic and foreign policy and should encompass the entire existence of a neutral. The so-called neo-neutrality introduced by Cohn, whom Bockhoff openly disdained for his Jewish origins, was according to him 'one-sidedly favouring the pro-Jewish and Freemason-Bolshevist world front, whose organised provocation tactics only defend the war aims of certain power groupings', which in the long run made the 'neutral democracies' an 'open charade'.[600] Rather than being limited to the

[595] Berber, "Neutralität und kollektive Sicherheit," 360.
[596] Berber, 370.
[597] Berber, "Neutralität und kollektive Sicherheit."
[598] Lawrence Preuss, "National Socialist Conceptions of International Law," *American Political Science Review* 29, no. 4 (August 1935): 608, https://doi.org/10.2307/1947790.
[599] Preuss, 608.
[600] Ernst Hermann Bockhoff, "Ganze Oder Halbe Neutralität?," *Nationalsozialistische Monatshefte*, 1938, 913.

military sphere, Bockhoff suggested that neutrality should also include public opinion. The category of neutrality would thus be further stretched to be applicable to individuals' opinions. The formation of public opinion, Bockhoff argued, should be in line with obligations of the state under international law.[601] As the Norwegian scholar Edvard Hambro summed up, total or ideological neutrality implied 'a neutral attitude even in sentiments and opinions. It involve[d] the submission of the public opinion under the absolute authority of the state. For it [was] not only the state as an international entity, not only the government, but the whole people, the entire public life of the nation that must be neutral'.[602] Neutrality had to embrace 'the entire existence of the neutrals' and find its expression in all fields of public life. [603]

By readjusting the earlier legal forms of neutrality, a new political form emerged which became part of the discursive struggle seeking to create new standards of international society based on very different values. In the nationalist-socialist discourse, the threat was coming not only from 'Judeo-Bolshevism but also from the 'West' and its liberal ideas about society and culture. As Johannes Dafinger's study of Nazi semantics showed, Britain and France were blamed for 'betraying' the European cause by allegedly 'replacing "European law and order (*Ordnung*), discipline (*Zucht*) and unity (Geschlossenheit)' with 'demoralization' (Zuchtlosigkeit), 'liberty without boundaries' and 'the belief in mankind, embracing all races, nations, religions and cultures'.[604] Guaranteeing equal rights to Jews and coloured people posed 'a tremendous threat to the white race' and could lead to 'the destruction of the strata which are the cultural pillars'.[605] A new mode of social organisation was to be projected outside and adopted as an alternative to the liberal internationalism. Neutrality was then seen as a part of this project, having a political function in re-constituting the international order based on the National Socialist norms. As the liberal internationalists and Soviets viewed their version of the international law, and by the same token the institutions, as a means of progress to the social change, National Socialists did so too.

[601] Bockhoff, "Ganze Oder Halbe Neutralität?"
[602] Edvard Hambro, "Ideological Neutrality," *Nordisk Tidsskrift for Intenraitonal Ret* 10 (1939): 110.
[603] Hambro, "Ideological Neutrality."
[604] Johannes Dafinger, "Speaking Nazi-European: The Semantic and Conceptual Formation of the National Socialist 'New Europe,'" in *A New Nationalist Europe under Hitler: Concepts of Europe and Transnational Networks in the National Socialist Sphere of Influence, 1933-1945*, ed. Johannes Dafinger and Dieter Pohl, Routledge Studies in Second World War History (London ; New York, NY: Routledge, Taylor & Francis Group, 2019), 44–45.
[605] Dafinger, 44–45.

Neutrality as a policy – from ideology to the 'real'

This ideological struggle over the nature of order and its institutions that was unfolding in the 1930s, also informed the different conceptions of legal and political forms of neutrality. It led to the inoperability of many concepts, thus raising the ontological questions of what was 'real' and introducing different epistemological tools of accessing reality. These discussions over the role of ideologies and the 'realness' was part of a broader discussion of the problem of change in the international order and how to go about it.

Already prior to the rise of realist school of thought and emergence the International Relations as a discipline, the ideas of turning to the 'real' were introduced among different thinkers, as they became increasingly disillusioned with the system of collective security or the ideology. Some scholars grew increasingly sceptical about the relation between the concepts which were used to justify the new vision of the order and what was perceived to be the lived experience. The first set of critique was about the use of liberal internationalist concepts to mask practices which were fundamentally violent, thus embellishing them with an opposite meaning than their proclaimed goal of peace. For instance, Edwin Borchard, in his editorial comment for The American Journal of International Law, which came out a month after the Munich agreement, spoke of a 'popular illusion that peace might be assured by bestowing seductive names such as 'collective security', 'preventing war', 'international cooperation', on contrivances, like sanctions, which were hostile and warlike in character'.[606] This 'form of deception' was according to Borchard not new and 'Article 47 of the Treaty of Westphalia, 1648, embodied a similar device'.[607]

Similar opinions could also be found in Carl Schmitt's critique of liberalism and its claims to abolishment of war through instruments such as the Briand-Kellogg pact, which it managed to do so, he argued, only at the level of concepts. By categorising of acts of violence as either a crime or enforcement, he argued, it enabled using extreme measures against the adversary, while eliminating the restraints established via the old European nomos.[608] With different intentions, this charge also came from the national socialist jurists in support of Germany's rearmament. They argued that the 'the existing theories […] hypocritically minimize the ro1e of force in the relations of states, and serve as a deceptive cloak for the actual

[606] Edwin Borchard, "Neutrality and Unneutrality," *American Journal of International Law* 32, no. 4 (October 1938): 779, https://doi.org/10.2307/2190598.
[607] Borchard, 779.
[608] Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*.

Machtpolitik of the heavily-armed Powers'.[609] At the bottom, there was power politics. A 'realistic' theory of international law was in demand also by the national socialist jurists who maintained that this ideology served to preserve a 'static legal system' obstructing Germany's 'legitimate demands for dynamic change'.[610]

A wave of critique that emerged in the late 1930s that later came to be associated with the realist school of thought acknowledged the inoperability and deception of the concepts of the interwar international law and re-introduced 'politics' back into the analysis via the 19th century concepts such as reason of state, state interests, or balance of power which were perceived to be more accurate in understanding the dynamic environment and the problem of change in international relations. These authors thus sought to recover neutrality's strategic form that would in their eyes better suit contemporary circumstances. Most important in this shift from the legal to the strategic form of neutrality in the international order were the articles of Hans Morgenthau in the years leading up to WWII.

This perception that ideology cloaked the reality of power politics entered into his analysis of neutrality, which proposed a new, more fluid conceptualisation that would overcome disputes over its definition in international law and over the rules that should guide this institution. Morgenthau argued that the discipline of international law focused on 'absolute concepts, theoretical generalisations, and systematic constructions' which would not be able to hold its ground when faced with the 'real law of nations'.[611] The European states, he argued, 'permitted themselves to be misled by the legalistic-pacifist ideology with which the 'spirit of Geneva' knew how to disguise the political reality, and on the other hand, in their reasonable endeavour to lessen their own risks, they contributed to the destruction of the of the politico-legal instrument on which their own security partially depended'.[612] This ideology on which the small European states' policy rested, Morgenthau argued, was based on elimination of politics from the international realm. Legal institutions substituted political decisions '[…] and therefore attempted, by means of the universality of the League, arbitration, and disarmament, to prevent the breaking up of Europe into antagonistic Power groups and thereby the return of the system of balance of power'.[613] According to Morgenthau, political conflicts, however, existed independently of the 'political forms of organisation'.[614]

[609] Preuss, "National Socialist Conceptions of International Law," 597.
[610] Preuss, 597.
[611] Morgenthau, "The Problem of Neutrality," 110.
[612] Hans J. Morgenthau, "The Resurrection of Neutrality in Europe," *American Political Science Review* 33, no. 3 (June 1939): 479, https://doi.org/10.2307/1948801.
[613] Morgenthau, 479.
[614] Morgenthau, 479.

Morgenthau proposed to zoom in on the 'social forces' underpinning international law and the contemporary system to explain its disappearance and reappearance - that being the competition for power. Seeking to return neutrality to its political dimension he regarded it as an 'outgrowth' or a 'function' of balance of power which was to account for its existence.[615] Contrary to the static system of collective security based on an assumed 'permanent harmony of interests', balance of power was seen to be 'a temporary modus vivendi of antagonistic political interests'.[616] Thus, when the balance between different power groups was upset, a neutral state lost its 'privileged place in the midst of the balance, losing thereby the source and guarantee of its neutral status'.[617] Neutrality, as a political-legal status was therefore possible and dependent on 'the consideration of political expediency as to whether in a given case the belligerents have any interest in the violation of this status, and whether this interest can prevail against the fear of the risk which might result from such violation'.[618] Other factors that entered into a neutral's ability to keep their status were geography, neutral's armed forces, and support secured from other powerful neutrals or at least one of the belligerents. Neutrality was thus seen as feasible only if invasion of the neutral raises serious costs to one of the belligerents.

This conceptualisation of neutrality sought to recover 16th century arguments about neutrality's usefulness as strategy of statecraft in a system determined by the 'universal empire' – an unrestrained pursuit of sovereignty. The rights of neutrals, and international law as a whole, were respected to the extent that the interests of states coalesced around it. Belligerents' interests were reduced to one thing – winning the war – in the process of which they would try to destroy the position of the 'neutral' and secure economic, political, and military support for themselves instead of the enemy. The chief political dilemma for the neutral was thus whether to participate in the war or give up its independence and territory.[619]

Whilst Morgenthau's discussion of neutral rights focused on the so-called traditional European neutrals, other scholars were also considering the rationale behind American neutrality. American neutrality, which was seen by Schmitt to have an extreme form, was regarded by others who looked at neutrality from the strategic perspective as a way of balancing. When considered from the perspective of material capabilities, the position in which a nation rich with resources had the capacity to make a difference in war by cutting off

[615] Morgenthau, "The Problem of Neutrality," 117.
[616] Morgenthau, 117.
[617] Morgenthau, 125.
[618] Morgenthau, 115.
[619] Hans J Morgenthau, "The Resurrection of Neutrality in Europe," *The American Political Science Review* 33, no. 3 (1939): 486.

belligerents from accessing materials for conducting war was interpreted by some as 'malevolent neutrality'. As the US scholar Philip Marshall Brown would argue:

> For if it is known that in a war we may or may not be willing to sell necessary supplies, is it not obvious that by exercising that right to discriminate we make ourselves the arbiter of the balance of power? […] It would mean that since the United States reserved the right to discriminate and thus perhaps to decide the outcome of the war, the United States would be entangled at all times in one way or another in the shifting alignments of the European world.[620]

The former Secretary of States Henry Stimson also recognised the different notions of neutrality at play. Stimson noted that 'effective neutrality did not mean effective impartiality' and could actually imply quite the opposite in the case of a great sea power.[621] Stimson argued that neutrality in this case would be equal to 'taking sides with that Power against its opponents who do not control the sea'.[622] Rather than an outgrowth of the balance of power, from this perspective, the neutral was a direct participant in the balance of power, if not its arbiter.

This shift of focus on the underlying conditions of power and states' interests led to a new conception of neutrality which was supposed to overcome the confusion about common rules of neutrality and address the new problems of cooperation and conflict. As the US academic Amry Vandenbosch stated in 1936, when discussing the problem of neutrality and peaceful change, 'the old rules which formerly governed the relations between neutrals and belligerents have been thrown into hopeless confusion'. [… It was] therefore, no longer a matter of going back to some old certainty, but rather of moving forward to a new position more in conformity with present-day needs and aspirations'.[623] The response to present-day needs and aspirations was, according to experts of the recently established US Council of Foreign Relations, Allan W. Dulles and John Fisher Armstrong, a move away from the legal notion of neutrality which was buried by WWI and Kellog-Briand pact towards conceptualising it as a 'policy'. The goal was, as they pointed out, 'to make realistic and non-technical examination' of the US position and to provide different courses of action for the government.[624] Thinking about neutrality from this perspective allowed 'within certain limits

[620] Philip Marshall Brown, "Malevolent Neutrality," *American Journal of International Law* 30, no. 1 (January 1936): 88–90, https://doi.org/10.2307/2190561.
[621] Stimson, "Neutrality and War Prevention," 121.
[622] Stimson, 121.
[623] Amry Vandenbosch, "Neutrality and Problems of Peaceful Change," *Proceedings of the American Society of International Law at Its Annual Meeting* 30 (1936): 136, https://doi.org/10.1017/S0272503700040301.
[624] Alan W. Dulles and Hamilton Fish Armstrong, *Can We Be Neutral?* (New York: Council for Foreign Relations, Inc., Harper & Brothers, New York, 1936), 18.

[…] an almost infinite number of permutations and combinations' of neutrality.[625] Not only was neutrality as conceived this way supposed to be a response to the contemporary crisis, it was also supposed to provide a basis for 'dealing with other conflicts involving entirely different problems and presenting different dangers' in future.[626] In other words it allowed for a certain level of standardisation based on the evaluation of national interest, making neutrality more of a bureaucratic matter. This shift in understanding neutrality as a 'policy', it was argued, allowed for more flexibility in the fast-paced environment of conflicts that needed to be 'managed' in the eyes of American policy-makers.[627]

The move towards a fluid understanding of neutrality as a policy was also heralded by other international lawyers such as Philip Jessup who insisted that the US was in fact 'free to choose from a number of neutrality policies'.[628] Jessup claimed that neutrality 'is a living and ever changing subject like biology, economics and all law. The developments of each new day in the world's history need to be considered'.[629] Jessup, like Dulles and Armstrong, saw the policy of US neutrality as being compatible with the goal of international organisation that would help prevent wars from happening and help resolving the debate of isolation vs. cooperation. According to Jessup, 'American neutrality policy could safely supplement the League system and need not be antagonistic to it. In framing a neutrality policy we need not face the dilemma of choosing between isolation and international cooperation. There is an honourable cooperative road to peace by way of neutrality'.[630] Without a shared understanding of order in place, neutrality could only be considered as a means of pursuit of a state's interests and be evaluated based on its effectiveness in achieving state interests.

This lack of a shared understanding of the order as well as the understanding of what neutrality should be during this period, left neutrality to be a matter of choice of individual states and their policies. The contestation of the legal form of neutrality and emergence of different political forms of neutrality conditioned the return of its strategic form. This form was concerned with preservation of the basic institution of international society – the state – and whether neutrality was a salient choice under the conditions of balance of power, or lack of these conditions. Neutrality was yet again articulated as means of pursuing individual economic

[625] Dulles and Armstrong, 8.
[626] Dulles and Armstrong, 18.
[627] Dulles and Armstrong, *Can We Be Neutral?*
[628] Philip C. Jessup and Francis Deâk, *Neutrality, Its History, Economics and Law* (New York: Columbia Univ. Press, 1935), 211, https://archive.org/details/neutrality0000unse/page/210/mode/2up?q=biology.
[629] Jessup and Deâk, 211.
[630] Jessup and Deâk, 212.

and security interests, reviving and re-defining the utilitarian arguments of the late medieval and Renaissance period associated with this conception of neutrality. This understanding of neutrality in relation to power then conditioned how it was discussed during the Cold War in the West.

6. Between the East and West: Contesting the Empty and Free Spaces

With the end of the Second World War, a whole new set of concerns arose in relation to nuclear weapons, ideological contestation, and decolonization in the context of which neutrality was once again discussed and contested. Although the new philosophy of war based on deterrence initially spelled out neutrality's disappearance, neutrality continued to remain a feature of Cold War politics. The existing neutrals were incorporated into the strategic vision of US policy makers, in which they were seen as an extension of the US policy of Soviet containment driven by ideological considerations. Further expansion of neutrality was at first seen as creating a 'power-empty' space, which was susceptible to being absorbed by the Soviet empire, which incorporated neutrality into its ideology, being seen as part of its policy of peaceful coexistence. The non-feasible power-empty space then gave way to a nuclear-free status as the concept was rearticulated by different actors, leading to changing perceptions about the necessity of these free spaces for the stability of the system. The dangers of nuclear escalation eventually led to institutionalisation of the ethico-normative form of neutrality as these states facilitated mediation between the two superpowers, and the political form of neutrality that contributed to changing the norms of international conduct, shaping how the balance of power could take place with limitations put on nuclear proliferation. These roles were also claimed by the non-aligned states which revived and reified the connection between neutrality and freedom of choosing their own model of development, now reinterpreted against the backdrop of old War competition between the two developmental models. The link between development and neutrality was also made by scholars, who suggested that international organizations would become complementary actors to practice of neutralization.

War in the age of atom

Nuclear power created new challenges for which traditional military strategists began to be perceived as ill-equipped, this gave rise to new intellectual elites, the so called 'defence intellectuals' who came up with a new conceptual apparatus to grasp the reality of atomic age. What emerged in the aftermath of the Second World War in the US was what Emmanuel Adler defined as an epistemic community, which played a key role in defining the problems and solutions of the nuclear predicament.[631] As it was in the aftermath of the first world war, the

[631] Emanuel Adler, "The Emergence of Cooperation: National Epistemic Communities and the International Evolution of the

experts became once again concerned about how to avoid war, which in the context of nuclear weapons would be 'absolute'. As Roman Kolkowicz pointed out, these new military strategists followed the 19th century influential military strategist Jomini who understood the study and conduct of war 'as a science that could be reduced to fixed rules and mathematical formulas'.[632] This science of war had origins in the Enlightenment tradition of democratic liberalism which saw man as having the ability to control, manage, and order society and forces of conflict by rational, scientific, and technological means.[633] In the nuclear age these ideas found expression in the literature on deterrence strategies and premises of crisis management and control of armament, according to Kolkowicz. Within this epistemic community this often turned into an obsession with precise control and manipulation of violence levels using various computer models and complicated conflict scenarios, quantification of war and defence management that understood war to be sterile game that included machines, money, and various management techniques. War was to be a domain of military experts alone.[634] Their position on neutrality was conditioned by a shifting understanding of how wars were to be fought.

This new influential group of intellectuals argued as early as 1946 that the philosophy of wars and the way wars were to be fought radically transformed with the introduction of atomic weapons. As one of the chief architects of the US nuclear strategy associated later with the RAND Corporation, Bernard Brodie wrote in 1946, the concern was no more about who would win the war. This radically altered the way neutrality could be articulated, or rather, was impossible to articulate in its previous form. Because a total war could no longer be won, Brodie argued, the purpose of the US military establishment had to shift from winning wars to averting wars. The wars were however not to be averted through legislation, by outlawing them as the liberal internationalists tried, but rather through technological advancements in warfare and proliferation of nuclear weapons associated with the new philosophy of war - deterrence. Even if the nuclear bomb was not deployed in future wars, Brodie claimed, its shadow would 'so govern the strategic and tactical dispositions of either side as to create a wholly novel from of war'.[635]

In the age of atom, the next war would inevitably be a total war, the costs of which could never be justified, Brodie argued. The purpose of deterrence was thus to arrest this

Idea of Nuclear Arms Control," *International Organization* 46, no. 1 (1992): 101–45, https://doi.org/10.1017/S0020818300001466.

[632] Roman Kolkowicz, "Intellectuals and the Nuclear Deterrence System," in *The Logic of Nuclear Terror*, ed. Roman Kolkowicz, Publications of the University of California Project on Politics and War (London: Allen & Unwin, 1987), 30.

[633] Kolkowicz, "Intellectuals and the Nuclear Deterrence System."

[634] Kolkowicz.

[635] Bernard Brodie, *The Absolute Weapon. Atomic Power and World Order* (New Haven, Connecticut: Yale Institute of International Studies, 1946), 69.

imminent development to total war.[636] Deterrence itself was not a new concept, Brodie noted, although the way it was practiced changed. The major difference in how the deterrence was to be practiced in the atomic age was the nature of threat being used, and its reliance on a retaliatory instrument that should not have to be called into action twice. The sanction needed to have an absolute effectiveness, and to possess this absolute effectiveness the retaliatory instrument needed 'to have its capacity to function maintained a very high level and constantly refined'. The system had to be 'constantly perfected while going permanently unused'.[637] Science thus had the task of addressing the problem created through scientific advancements in the first place.

This philosophy rested on the Clausewitz' dictum that wars always have a political objective, otherwise they would be merely a senseless destruction. The difficulty, if not impossibility, of finding a credible political objective for using nuclear weapons which cause immense destruction was what the concept of nuclear deterrence rested on, according to Brodie.[638] A similar point was also made by Hannah Arendt, discussing the changing nature of violence, which through technological development had reached a point where the destructive potential of tools of violence could no longer be justified by any political goal. Pointing out the changing function of wars, she argued that as a means of resolving disputes, warfare lost much of its effectiveness. With the new goal being deterrence rather than victory, the arms race was no longer a preparation for war, and it was possible to justify it with reasoning that 'more and more deterrence is the best guarantee of peace'.[639]

Military strategy thus had to be adjusted to the new philosophy of war. According to Paul-Henri Spaak the army needed to incorporate into its calculations the use of atomic weapons, which included reorganization of the army from conventional arms and weapons towards dispersion of forces, which was to be the most effective defence against atomic weapons. For Spaak, 'the atomic bomb left no room for neutrality or separate national policies'.[640] The dispersion of forces took the form of creating military bases around Europe, where American troops, missiles, and nuclear warheads were to be stationed. The nuclear umbrella was seen as the best way of gaining security for the Western bloc. Within this new thinking about war that required use of bases on as much territory as possible, the strategic

[636] Bernard Brodie, "The Anatomy of Deterrence," *World Politics* 11, no. 2 (January 1959): 173, https://www.jstor.org/stable/2009527.
[637] Brodie, 175.
[638] Bernard Brodie, "The Development of Nuclear Strategy," *International Security* 2, no. 4 (1978): 65–831.
[639] Hannah Arendt, *On Violence* (New York: Harcourt, Brace & World, 1970), 4.
[640] Paul-Henri Spaak, "The Atom Bomb and NATO," *Foreign Affairs* 33, no. 3 (1955): 359, https://doi.org/10.2307/20031103.

form of neutrality as an individual choice of states and security provider was impractical. According to this logic, the death of neutrality was supposed to follow yet again.

Reappropriating neutrality

With the predictions of the death of neutrality by defence intellectuals whose efforts to achieve absolute dispersion of nuclear weapons and participation of all Western countries in the common security structures, the persistence of traditional neutrals did not make much sense. Nevertheless, Switzerland and Sweden continued to pursue their neutrality despite the efforts of the US to integrate them into NATO. In fact, this neutrality was eventually incorporated into the US defence strategy, which was very much driven by the ideological confrontation and not just rational calculations of the defence intellectuals.

Ideological competition was an important feature of the Cold War that also defined how neutrality was conceptualised. Both the American and Soviet ideologies were universalistic, with both insisting that their conceptions of societal organization should be applied to all nations and peoples.[641] And as David Engerman argued, they shared many features, such as their 'progressiveness' that reflected their understanding of history as an iron-clad march towards improvement 'defined in terms of spread of their own influence.'[642] Soviet expansion was understood through the lens of American ideology as a 'direct blow to the gradual spread of freedom', and Soviet thinkers interpreted the expansion of America as evidence that the final crisis of capitalism was imminent.[643] Finally, both of the actors regarded the increase of their power as constitutive of historical progress, declaring their messianism and universalism through which they aspired to 'transform the whole world as a means to social progress'.[644]

If the Soviet side could not be persuaded to adopt the liberal democratic standards, it had to be contained, as the famous telegram of George Kennan stated. From the perspective of the US policy of containment, the 'Western' neutrals came to be seen as a deterrent or a barrier to expansion of Soviet influence, and their government's ideological leaning combined with their military preparedness was seen to be in line with US strategic interests as well as its policy of containment of Soviet ideology.[645] Their neutrality was accepted to the degree that they were

[641] David Engerman, "Ideology and the Origins of the Cold War," in *The Cambridge History of the Cold War*, ed. Melvyn P. Leffler and Odd Arne Westad (Cambridge ; New York: Cambridge University Press, 2010).
[642] Engerman, 24.
[643] Engerman, 24.
[644] Engerman, 24.
[645] Jussi M. Hanhimäki, "The First Line of Defence or a Springboard for Disintegration? European Neutrals in American Foreign and Security Policy, 1945–61," *Diplomacy & Statecraft* 7, no. 2 (July 1996): 385–86,

seen as an extension of the Western military alliance, as Hanhimäki pointed out. The traditional neutrals also engaged in development of nuclear weapons and Sweden and Switzerland both had a nuclear program. And at some point, allies even contemplated the idea of deploying nuclear weapons in these countries as a means of protecting their neutral status.[646]

Likewise, neutrality was incorporated into the ideological apparatus of the Soviet Union. And in fact, the Soviet Union started to actively promote the expansion of neutrality and incorporated it into its policy of 'peaceful coexistence'. While in the 1930s, neutrality was mostly discussed by Soviet thinkers and practitioners through legal concepts, academic pieces about neutrality as a 'policy' began appearing in the Journal of International Affairs (Moscow) which was established in 1922 as a weekly of the USSR People's Commissariat for Foreign Affairs, and then later in 1954 re-established as a monthly edition. Against the legal conception of neutrality, D. Melnikov's 1956-piece *Neutrality and the Current Situation* argued that the status and rules of neutrality were historically determined by the social, political, and economic conditions of a given epoch. Therefore, the criteria 'for evaluation of the varieties and instances of neutrality in different historical epochs' could not be absolute.[647] 'Specific analysis of a specific situation is the decisive factor in defining the significance of neutrality in various periods of history', claimed Melnikov.[648] No criteria were offered, such as 'national interest' or an administrative procedure for evaluation of neutrality, that the US realists would use. Instead, neutrality was deemed as 'honest' if it conformed to the given interpretation of the Marxist-Leninist doctrine.[649]

As in the US, neutrality came to be viewed as an extension of the ideological struggle. As Wolfgang Mueller pointed out, the Soviet Union presented itself as being a supporter of the movement for neutrality and non-participation in military blocs, and 'the active 'struggle for peace' was seen as the highest duty of neutral policy and as 'the main criterion for evaluating it'.[650] Ultimately, the Soviet thinkers imagined creating a 'zone of peace' through their support of neutrality as well as neutralism/non-alignment, which they also saw as an extension of the Soviet policy of 'peaceful coexistence'. Neutrality and the peaceful foreign policy of the Soviet Union were thus seen to be on a continuum, which not only allowed Soviet leadership to appropriate the non-aligned movement and neutralism (discussed later) under the umbrella of

https://doi.org/10.1080/09592299608406008.
[646] John H. Herz, *International Politics in the Atomic Age* (New York: Columbia University Press, 1959).
[647] D. Melnikov, "Neutrality and the Current Situation" 2, no. 2 (February 29, 1956): 75.
[648] Melnikov, 75.
[649] Melnikov, "Neutrality and the Current Situation."
[650] Wolfgang Mueller, "The USSR and Permanent Neutrality in the Cold War," *Journal of Cold War Studies* 18, no. 4 (October 2016): 148–79, https://doi.org/10.1162/JCWS_a_00683.

its ideological struggle, but it also allowed claims such as neutrality and non-aggression being the policies of the Warsaw Pact. In the Soviet perspective, the return of neutrality was not only the symptom of growing resistance against imperialism, as defined by the Soviet doctrine, but neutrality was promoted as a means of solving the problem of imminent war.

Neutrals as a power-empty space

With the Korean war, it became clear that total war would not be the only feasible outcome of the military confrontation between the two Great Powers. The development of thermonuclear weapons led some to consider the difference between a general war from limited/theatre war, as Brodie noted.[651] New theories about strategic nuclear weapons posited that they repelled strategic nuclear power only, or that that they made 'lesser wars' more likely, 'as though the pressure for war was more or less constant and the blockage of it in one direction made it only more insistent to break out in another'.[652] Following that, it was argued that nuclear weapons must not be engaged in European theatre warfare, and instead there ought to be a build-up of conventional forces which would increase the threshold for the use of tactical nuclear weapons so that it was too high to be broken. This theatre deterrence would be far more effective, it was argued, than relying on tactical nuclear weapons. The US president Kennedy and Secretary McNamara then adopted these ideas into policies.[653] Thus, despite the initial scenarios of the demise of wars, nuclear weapons did not eliminate the possibility of conventional warfare, and on the contrary, made the prospect of its territorial expansion advisable. This led to the return of the emphasis on territory that conditioned the understanding of war defined by who should and should not be included in these theatres of war, and whether neutrality should be expanded or not.

As a result of the Soviet 'peace offensive', which included initiatives for neutralization of Austria, Germany, and Indochina, the expansion of neutrality was one of the many concerns of both the Truman and Eisenhower administration in the first half of the 1950s. The debates about neutralization of Germany coincided with formation of NATO system in the course of 1950s and how to establish American military presence in Europe and the role of Germany in this. Western Germany was seen as the most 'exposed area and a country whose status as an

[651] Brodie, "The Development of Nuclear Strategy," 75.
[652] Brodie, 75.
[653] Brodie, "The Development of Nuclear Strategy."

ally was the most problematic'.[654] The matter of settling the borders between the East and West thus yet again brought up discussions about expansion of neutrality. Stalin's proposal of March 1952, which is today mostly regarded by academics as an insincere and propagandistic tool, offered the end of occupation and reunification of Germany 'at the price' of the country's neutralization.[655] The legal status of neutrality as 'power empty' was for the first time discussed in relation to Germany. The infamous note of Stalin proposed new terms of the peace treaty which would establish a unified Germany as a neutral state with state with a limited army for its own security needs and free elections.[656]

The Soviet suggestions for neutralization of Germany were however seen as unacceptable by the Western bloc and in line with the idea of impossibility of independent foreign policy promoted by US defence intellectuals. The British diplomat and permanent undersecretary of the state William Strang commented on the issue of a unified, neutralized Germany, as leading to a 'permanent state of tension and insecurity in the heart of Europe'.[657] Neutralization of Germany was regarded as a security threat for Europe as a whole and was thus rendered as impossible as an institutional solution. Like the non-European states in the 19th century discourse, Germany could not be left to its own devices, as it would be incapable of preserving its impartiality and independent foreign policy. It would lead to expansion of extreme nationalism, as the Nazi Germany and the Soviet Union were viewed to be on the same continuum.

Neutralization was contemplated in two versions, either by the building up Germany's own national army similar to Switzerland or Belgium, or through disarmament in line with the Scandinavian tradition, both of which were seen as unacceptable by Strang. Firstly, a militarily powerful reunited Germany would have a lot of bargaining power between the East and West (similar to the U.S. during and prior WWI) that would lead to alignment with the Soviet Union, which had more to offer in terms of former German territories. Neutralization of such a powerful country would be advantageous only to the Russia as it would tip the balance of power towards their advantage.[658] Similar concern was voiced from Dulles in a telegram addressed to the UK foreign office in 1955 which expressed the unrealistic expectation of making a country of 70 million people being able to 'play the role of a neutral'.[659] Germany was thus too big and

[654] Marc Trachtenberg, *A Constructed Peace: The Making of the European Settlement, 1945-1963*, Princeton Studies in International History and Politics (Princeton, N.J: Princeton University Press, 1999), 102.
[655] Vladislav Zubok, "The 1952 Stalin Note on German Unification," 1952.
[656] V. M. Zubok, *A Failed Empire: The Soviet Union in the Cold War from Stalin to Gorbachev*, The New Cold War History (Chapel Hill: University of North Carolina Press, 2007).
[657] William Strang, "A Unified, Neutralized Germany," 1953, Cambridge University: Churchill Archives Centre.
[658] Strang.
[659] Mikael Nilsson, "The United States and Neutral Countries in Europe, 1945–1991," *Journal of Cold War Studies* 21, no. 4

powerful to be neutralized; rather than support the balance, it would tip the balance towards the Soviet Side. This version of neutralization was a rearticulation of Machiavellian argument that neutral would only ever be seen as a false friend in an environment characterised by unrestrained pursuit of power.

However, neutrality was completely rejected even if Germany was to be weak, as Strang put it, a disarmed neutralized Germany would be an easy prey to the Soviet aggression. A disarmed Germany would be so weak that, American troops having departed, it would be left 'at the mercy of the most powerful, ruthless and determined Power in Europe, i.e. the Soviet Union'.[660] German politicians themselves were against neutralization, in any form, as a 'price to pay' for the unification, according to CDU/CSU faction leader and future minister of foreign affairs in Western Germany Heinrich von Brentano. In his remarks at the Koeningswinter conference in 1953, von Brentano claimed that neutralization of Germany would 'create an empty space in the heart of Europe, which, according to the law of horror vacui would be filled up again. And the doom of the rest of free Germany would be the beginning of the doom of the rest of free Europe'.[661] Neutralization was modified to refer to a 'power-empty' space, which in an order defined by unlimited extension of power was impractical and a security threat. The law of horror vacui also was a rearticulation on the earlier discourses of universal empire, where the unrestrained pursuit of sovereignty, or in this case power, would leave neutral state vulnerable to be absorbed by the other empire. Neutrality was a hurtful choice for, both neutrals and the allies (friends). While the legal form of neutrality as exclusion of violence from spaces was regarded as not possible in this case, it was rearticulated as feasible in other instances.

Nuclear-free spaces

Germany was seen as impractical from a strategic perspective, but a neutral status was successfully applied and claimed by small states such as Austria or Finland, and outside of Europe by Indochina, as its definition was adjusted to reflect the conditions of the atomic age. The years of 1955-56 marked 'the most dramatic expansion of post-war neutrality', as Hanhimäki pointed out.[662] It also marked a departure from the earlier practice of permanent

(October 1, 2019): 218, https://doi.org/10.1162/jcws_a_00912.
[660] Strang, "A Unified, Neutralized Germany."
[661] Heinrich von Brentano, "Excerpt from Speech of Heinrich von Brentano," 1953, C 1016/21, The National Archives.
[662] Jussi Hanhimäki, "Non-Aligned to What? European Neutrality and the Cold War," in *Neutrality and Neutralism in the Global Cold War: Between or within the Blocs?*, by Jussi M. Hanhimäki, ed. Sandra Bott, Janick Marina Schaufelbuehl, and Marco Wyss, 1st ed. (Routledge, 2015), 20, https://doi.org/10.4324/9781315715001.

neutrality. The example of Austria was an important modification in relation to the legal status of neutrality as a nuclear-free space. The earlier legal form of neutrality allowed for self-defence of permanently neutral countries' status through arms and what type of arms were used for defence was not a political problem. In the Cold War nuclear arms race, possession of nuclear weapons was regarded as incompatible with this form of neutrality and determined how this form was to be institutionalised.

The shifting military strategy of dispersion of nuclear weapons to create a nuclear umbrella over as much territory as possible made the presence of military bases controversial to the status of neutrality. Austria's permanent neutrality was the first in Europe which was to incorporate an explicit provision about military bases. This was an important modification to the legal form of neutrality established in the 19th century which was defined through exclusion of national armies from this territory. The Austrian Constitutional Federal Statute defined three duties associated with its permanently neutral status, among which was also the duty 'not to grant military bases on its territory to foreign states'.[663] Finland's neutrality also started to be considered (although infamously as Finlandization) only after the removal of Soviet military base from its territory. Outside of Europe, although with less success, neutralization was also applied to Southeast Asian states, excluding the presence of military bases from the territories of Laos, Cambodia, and Vietnam at the Geneva conference in 1954.

The non-possession of nuclear weapons and military bases also appeared to be necessary for recognition of neutral status by the Soviet Union. The significance of nuclear weapons for the shift in the understanding of neutrality in both the East and the West was noted by John Herz, well-known for the concept of the security dilemma. He argued that exclusion of foreign military bases from the territory of permanently neutral states was more vital for preservation of this international status, which also explained why the Swiss were allowed to maintain their neutrality despite their membership in the League of Nations. Norway's lack of foreign military bases Herz argued, thus made it 'more neutral' than others in the Western bloc, despite being in NATO.[664] Furthermore, as Wolfgang Mueller pointed out, Soviets argued that possession of nuclear weapons would not only increase probability of neutral states being destroyed in a nuclear retaliation, but it would also increase neutral states' dependence on Western military technology.[665]

[663] Josef L. Kunz, "Austria's Permanent Neutrality," *American Journal of International Law* 50, no. 2 (April 1956): 418–25, https://doi.org/10.2307/2194959.
[664] Herz, *International Politics in the Atomic Age*.
[665] Mueller, "The USSR and Permanent Neutrality in the Cold War."

Nuclear weapons thus could not offer the same kind of protection to neutrality as the conventional weapons could. When Sweden and Switzerland considered beginning programs for nuclear defence in the 50s and 1960s, a fierce propaganda attack from the Soviets followed and between 1955-1959 Soviets advocated also advocated for neutrality of Japan, Turkey, Greece, and Italy[666] Between the years of 1955-1959, the Soviets advocated not only for adoption of neutrality by Western Germany, but also Italy, Turkey, Greece and Japan. 'The Bulganin notes of 10 December 1957 and 8 January 1958 even offered a special Soviet guarantee to countries that declared "nuclear neutrality" and gave up their launching sites'.[667]

The problem of nuclear weapons and their potential for annihilation was, through the Marxist-Leninists ideology interpreted as the result of imperialist forces, to which neutrality was presented as a solution. In the Soviet interpretation, the doomsday scenario was a result of Western nuclear proliferation only, and the resurgence of neutrality was interpreted in anti-imperialist sentiments, rather than the result of a balance of power.[668] The expansion of 'the zone of neutrality was then seen through the ideological lens as the Soviet upper hand in the struggle with the West, as E.A. Korovin argued. Neutral zone reflected the 'sense of repulsion and hate for the imperialist forces which are pushing [neutral states] to certain doom'.[669]

This conception of nuclear-free space was also reflected in the Soviet legal definitions of permanent neutrality as 'an international legal position of a state which is obliged not to participate in any wars, except in self-defense, and in times of peace to pursue a policy that prevents it from being drawn into war, in particular: not to join military alliances, not to permit the stationing of foreign military bases on its territory, not to equip its army with weapons of mass destruction, as well as to fight for peace and peaceful coexistence of the state'.[670] The Soviets were not only actively promoting this type of neutrality but also saw it as necessary for a 'peaceful coexistence' between the two systems.

This redefinition of legal form of neutrality and its expansion was not only pursued by the Soviets but the neutrals themselves. In the mid-1950s Finnish President Urho Kekkonen proposed to create a Northern European nuclear weapon–free zone (NWFZ), which would besides Finland, include Norway and Sweden.[671] This initiative resembled the movement for

[666] Mueller.
[667] Mueller, 159.
[668] E.A. Korovin, "The Problem of Neutrality Today," *International Affairs* 4, no. 3 (March 31, 1958): 36–40.
[669] Korovin, 37.
[670] Tiunov in Wolfgang Mueller, *A Good Example of Peaceful Coexistence? The Soviet Union, Austria, and Neutrality 1955 - 1991*, Zentraleuropa-Studien, Bd. 15 (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2011), 61.
[671] Jonathan R. Hunt, "Neutral and Nonaligned Nations in the Making of the Postcolonial Nuclear Order," in *Neutral Europe and the Creation of the Nonproliferation Regime: 1958-1968*, ed. Pascal Lottaz and Yōko Iwama, Routledge Advances in International Relations and Global Politics (Abingdon, Oxon [UK] ; New York, NY: Routledge, 2023).

neutralization of the Scandinavia under the pacific mission of the earlier century, now however reframed to incorporate the changing nature of war. Another plan for the creation of a nuclear-free zone was introduced by Poland in the context of the Rapacki plan for establishment of a denuclearised zone in Central Europe. This plan was also favoured by Austria, which was seen as the 'model concept for a nuclear-free zone in Europe'.[672] At the end of the 1950s the foreign minister of Austria, Kreisky also promoted the plan and even suggested inclusion of Austria, Scandinavia, Greece, and Switzerland within the nuclear-free zone. Inclusion of Hungary, he added was also desirable.[673] The nuclear-free status of Austria and the decision to establish the future organisation for control of nuclear energy, that is the International Atomic Energy Agency, in Austria, would give grounds for articulation of ethico-normative and political form of neutrality in which Austria's neutral status would be presented a 'centrepiece of international détente and an essential center for the maintenance of world peace'.[674]

Neutrality and power politics – from creating instability to mitigating instability

The expansion of neutrality in the 1950s led also to academic discussions as to why neutrality returned and was feasible again, which was offered by the emerging schools of thought in international relations, seeking to reinterpret the role of neutrality outside of ideology. A discussion of neutrality would soon be taken up by another epistemic community, bringing the politics back into consideration for the Cold War order, which the extreme ideological contestation did not allow for.

Parallel to the rise of the new epistemic community of defence intellectuals was the formation of the realist school of thought which contributed to the formation of the discipline as a whole. These scholars, together with the English School of International Relations, while disagreeing on some theoretical and analytical points, formed another epistemic community grounded in an opposition to the rationalist approaches based on reason and scientific method but also rejected the ideological source of the US foreign policy. Within these theories it was yet again thinkable to understand neutrality as a strategic choice, as they also offered explanations for why neutrality persisted despite the initial doomsday scenarios. Realists in

[672] Anna Graf-Steiner and Herbert R. Reginbogin, "Austria. The NPT, Diplomacy, and National Identity," in *Neutral Europe and the Creation of the Nonproliferation Regime: 1958-1968*, ed. Pascal Lottaz and Yōko Iwama, Routledge Advances in International Relations and Global Politics (Abingdon, Oxon [UK] ; New York, NY: Routledge, 2023), 174.
[673] Graf-Steiner and Reginbogin, "Austria. The NPT, Diplomacy, and National Identity."
[674] Graf-Steiner and Reginbogin, 177.

particular, as Guzzini pointed out, set out to 'adjust international politics to the phenomenon of total war which results from the reversal of the Clausewitzian dictum, namely that peace becomes the prolongation of war by other means'.[675]

Initially, IR was seen as an interdisciplinary fringe of political science that lacked its own method as well as theory. The theory came from 'outside', from other social sciences. However, with political science and other disciplines coming under the umbrella of research standards of behaviouralism the status of IR turned out to be contentious.[676] As Guilhot pointed out the discipline itself emerged as a sort of 'intellectual irredentism' that resisted being integrated into the American social science and 'the methodological imperialism of behavioural revolution'.[677] For this epistemic community, the behavioural science of politics was in fact suppression, or as Morgenthau put it 'repudiation' of politics.[678] To carve out the space for IR as a discipline they had to adopt the scientific language as a means of subverting the prevalent spirit of science of that age, as Guilhot argued. Their theories were grounded in the 'Germanic tradition of Staatslehre and on a pre-rationalist view of politics and the state that sought a new audience in 1950s America by speaking the compulsory language of science, albeit with "thick German accent"'.[679] The practical knowledge of the 19th century diplomacy was to transform into an explanatory theory of IR.[680]

These scholars argued that there was no moral solution to the nuclear predicament, which was possible to mitigate only through diplomacy and prudential behaviour.[681] The nuclear question was tackled by bringing back the concepts and precepts of the 19th century, such as balance of power, diplomacy, and prudence. Reintroducing these concepts into the analysis, allowed neutrality to be once again discussed in its strategic form, with nuclear weapons playing an important role in determining its practicality.

Morgenthau's position about the possibility of neutrality during the Cold War was ambivalent. While some of the conclusions are similar to his interwar writings, he acknowledged that neutrals could have a role in the international order by not participating in the ideological struggles and providing channels of communication. In his 1958 book *Dilemmas of Politics*, Morgenthau reasserted his interwar claim that neutrality depended on the

[675] Stefano Guzzini, *Realism in International Relations and International Political Economy*, 0 ed. (Routledge, 2013), https://doi.org/10.4324/9781315004884.
[676] Nicolas Guilhot, "The Realist Gambit: Postwar American Political Science and the Birth of IR Theory," *International Political Sociology* 2, no. 4 (December 2008): 281–304, https://doi.org/10.1111/j.1749-5687.2008.00052.x.
[677] Guilhot, 282.
[678] Guilhot, "The Realist Gambit."
[679] Guilhot, 282.
[680] Guzzini, *Realism in International Relations and International Political Economy*.
[681] Adler, "The Emergence of Cooperation."

balance of power in the international system, for which the conditions were missing in the first decade of the postwar period. This period was characterised by systemic changes that accentuated the tendencies destructive of neutrality, both of which he explained in terms of power. On a systemic level, this was the tendency of a bipolar system to transform itself into a two-block system characterised by 'the two centres of first-rate power remaining in the world [which] exerted an irresistible attraction upon most of the other nations to the point of complete identification with one or the other of these superpowers' which resulted in a 'bipolar collective security'.[682] Within this two-bloc system Western European states were dependent upon the United States, while East European states 'fell victim' to the Soviet Union, and thus were unable to pursue independent foreign policy, such as neutrality. The only notable exception was India.[683] Morgenthau thus came to the same conclusion as the defence intellectuals but put more emphasis on the systemic transformation and the conditions of balance of power.

For Morgenthau, the increase of destructiveness of weapons of modern warfare was one of the factors contributing to the tendencies destructive of neutrality. Like the defence intellectuals, he concluded that the general war was bound to eradicate the distinction between neutrals and belligerents. Before the atomic fall-out and bacteriological contamination, all men and nations, big and small, neutrals and belligerents, were equal.[684] The atomic monopoly of the US provided nations 'outside of the soviet orbit', with varying degrees of 'protection against the threat of Soviet imperialism'.[685] It was only in the second decade of the post-war period that this tendency of system to form blocs was reversed, and the balance of power was restored, which allowed states to pursue policies of neutrality. Neutrality thus became 'rational' again after the nuclear balance was achieved. Morgenthau argued that its practice was in its 'economic aspects nothing but a matter of calculated self-interest' and its success would 'depend on both upon the bargaining strength of the neutralist nations and the policies of superpowers'.[686]

Although the strategic form of neutrality was feasible again under the conditions of the restored balance of power, Morgenthau did not see it as desirable, as he considered it to have the potential to foster instability. It could, he argued, increase the chance of atomic warfare because its prevention is dependent on the status quo of atomic stalemate, which is likewise dependent on the maximum of military strength exerted on all sides. The atomic balance of

[682] Morgenthau, *Dilemmas of Politics*, 203.
[683] Morgenthau, *Dilemmas of Politics*.
[684] Morgenthau.
[685] Morgenthau, 201.
[686] Morgenthau, 203.

power would be disrupted because neutrality could work to the advantage of one nation, and therefore increase the chance of atomic war. Neutrality could in the short term increase the security of a given nation, but in the long run would contribute to the 'destruction of the very foundations upon which its security ultimately rests'.[687] Interestingly, the neutrality of Austria enacted in 1955, which in theory should have shifted the balance of power and destabilised the system was never mentioned by Morgenthau.

The possibility of neutralist/nonaligned states as participants in the balance of power is discussed by Morgenthau in relation to the 'third force' or the neutralist and non-aligned countries which were only beginning to institutionalize their existence as political actors at this stage. At that point Morgenthau remained sceptical about its balancing potential as he perceived them to be missing common 'permanent vital interests' which would allow them to act as a unified actor on the political scene, for which anti-colonialism was seen to be not strong enough. Furthermore, even if these existed, they needed to be 'supported by the power necessary to transform them into common policies'.[688] This presumably meant that the neutralist bloc needed to acquire nuclear weapons to be able to counter-balance the other two powers. Neutrality was rendered as harmful and having de-stabilizing effect.

Despite his scepticism about the practicality of the strategic form of neutrality, Morgenthau acknowledged the relevance of what may be called an ideological neutrality, or what he called 'moral neutralism'. He defined it as a refusal of conflating political and military judgments with moral ones, which made the first subordinated to the latter, and turned military and political competition into a 'world-wide crusade'. In other words, this was a neutralism only on the level of its ideology which meant that a state may or may not be a part of one of the military blocks but refuses the universalising tendencies of the ideological struggle on both sides. Morgenthau was in fact critical of the 'utopian' criticism that this neutralism received, which assumed that 'the actions of nations toward each other must be judged by abstract moral principles' rather than by the standard of national interest as the realism dictates.[689] Morgenthau conceded that given the systemic changes, uncommitted nations can perform the function of 'channels of communication, sources of information, and mediators'.[690]

While Morgenthau discussed neutrality as a strategic choice of states pursuing this policy, the idea of neutral 'free space' was however also re-defined as desirable under the conditions of Cold War balance of power. For Fred Greene the power-empty spaces became

[687] Morgenthau, 204.
[688] Morgenthau, 205.
[689] Morgenthau, 206.
[690] Morgenthau, 207.

problem areas that needed to be neutralized. Greene acknowledged that under the conditions of ideological polarisation, nuclear warfare could be neither won nor successfully deterred through arms race (as a form of balance of power) and thus focused instead on crisis prevention. Greene argued that despite the military predominance of the great powers and flexibility of modern warfare 'effective interdiction of small, key areas would be of considerable military and psychological value in an age in which bases for launching atomic or rocket attacks are of tremendous importance'.[691]

The managerial duties of great powers were re-defined in terms of crisis prevention and drew on the new philosophy of war based on deterrence. The very existence of small, centrally located states, Green claimed, created a power vacuum, and these states could not 'be swallowed up by large powers without precipitating a crisis.'[692] For Greene, neutralization was a policy to be applied specifically to the 'critical zone of rivalry' and these problem areas.[693] Small, centrally located states were seen as a potential future risk that might develop into a bigger crisis because of the inevitability of power expansion. Neutralization was thus supposed to relieve the tensions that could at any point be created by 'unexpected developments.'[694] This reinforced the earlier notion of neutralization as being applicable only to small and weak states, which were to become spaces free of superpower competition. As in the 19th century, they were to be excluded as a means of providing stability to the order.

In an international order imagined as ever in flux with forces extending constant pressure on how national interests are evaluated, the guarantees of perpetuity were seen by Greene as a 'somewhat unreasonable procedure'.[695] As the balance of power shifted constantly, treaties were no longer seen as suitable means of guaranteeing this status. The guarantor states may not fulfil their pledge if their concept of vital interest changed, as pledges would never be adhered to solely on legal grounds, according to Greene. What had to be considered then was the 'efficacy of the treaty',[696] which could not be defined simply based on a number of states taking up the role of guarantors, according to Greene.[697] This interpretation thus dismisses the role of status of Great Powers and the nature of the 19th century order which, made such guarantees appear feasible at that time, while reducing the credibility of neutralization guarantees to numbers. Greene then suggested that the durability of this arrangement was to be

[691] Fred Greene, "Neutralization and the Balance of Power," *American Political Science Review* 47, no. 4 (December 1953): 1052, https://doi.org/10.2307/1951124.
[692] Greene, 1052.
[693] Greene, 1043.
[694] Greene, 1044.
[695] Greene, 1046.
[696] Greene, 1046.
[697] Greene, 1046.

ensured by 'periodical review and reappraisal of the pledges taken' that would take into account the changing state interests.[698] Neutralization now thus had to be periodically re-evaluated based on ever-fluctuating national interests of states through an administrative apparatus made up by foreign policy experts.

Furthermore, it was not just the efficacy of the treaty that was to be monitored, the 'proper behavior in the small state' also necessitated verification by 'clandestine investigation, by espionage and other means'.[699] This 'police activity' in the highly charged Cold War environment would be, according to Greene, within the scope and spirit of the UN Charter, as well as within the boundaries of its capabilities. This concept of neutralization was embedded in an understanding of international order which combined the ordering and policing functions of great powers and international organizations respectively. This idea was then further developed in the context of the Vietnam war by a group of scholars at Princeton University (discussed later).

Neutrals as promoters of peace and nuclear non-proliferation

Rather than passive 'nuclear free' spaces, neutral and non-aligned states started to play an active role by rehabilitating the ethico-normative form of neutrality in the international order. This took place in the period that came to be known as 'détente' which broadly referred to relaxation of pressures between the states of Eastern and Western bloc. There is a lack of agreement as to when the actual détente began, with some scholars going as far as 1955 neutralization of Austria, which is broadly when we can observe also claims of more active neutrality by Austria and Finland, among others.[700] This period has been often characterised by agreements made across the Iron Curtain, or by a changing 'mood', 'spirit', or 'attitude'. The concept of détente was then used to describe, both policies that contributed to the relaxation of these pressures, and a condition of the international order that allowed for the creation of common interests between the two antagonists.[701]

An important part of the détente was the so-called Ostpolitik of Willy Brandt and the shift in rhetoric of Kennedy's administration that allowed for the reclaiming the concept of peace from the Soviet monopoly of interpretation within the Marxist-Soviet ideology and the

[698] Greene, 1046.
[699] Greene, 1052.
[700] Brian White, "The Concept of Detente," *Review of International Studies* 7 (1981): 165–71.
[701] White.

policy of peaceful coexistence. As the study of Arne Hoffmann pointed out, from the late 50s both Brandt and Kennedy did a lot of discursive work to replace the vocabulary of war and power politics. From 1955, Brandt promoted peaceful coexistence through various high-profile speeches, publications, and lectures where the main message was that 'coexistence is not a mere alternative, but […the] only chance for survival'.[702] He linked the concept of coexistence to the democratic ideas of 'human dignity, tolerance, the right of self-determination and national independence'.[703] In 1959 Kennedy discussed already common interests in his peace speech: 'both the United States and its allies, and the Soviet Union and its allies, have a mutually deep interest in a just and genuine peace and in halting the arms race'.[704] According to Kennedy peace was a 'concrete political task had to be actively tackled'.[705] Following the Cuban Missile crisis, it became even more obvious that it was necessary to decrease tensions between the two blocs and both sides came to a shared understanding that there was a common interest in de-escalating the threat of nuclear war.[706]

Within this context, the ethic-normative role of neutrals as mediators and bridge-builders promoting peace could be rehabilitated and they could yet again be perceived as active agents shaping and contributing to creation of the balance, rather than be seen as passive 'free spaces'. As Martin Wight noted, this type of neutrality that was historically performed in the nineteenth century by Britain's non-intervention based on the maxims of economic expansion and focus on internal welfare, as well as American isolationism until 1941, could be seen as an alternative to the security policy, in refusing to take part in power politics and focusing on country's internal development. Simimlar neutrality was posssible to observe in the examples of India and Yugoslavia. This neutrality, Wight concluded had always been active in that it mediated between the Communist and Western powers and was thus 'committed in some sense to the holding the balance of the world'.[707] In the end Wight concluded that international society could not offer a satisfactory answer to the question of 'who shall police the policeman?', but the 'provisional answer has not infrequently been found in the critical conscience of the neutrals'.[708] What Wight thus pointed out was the revival of the ethico-normative form of neutrality that allowed these states to claim a special position in international society as facilitators of peace.

[702] Arne Hofmann, *The Emergence of Détente in Europe*, 0 ed. (Routledge, 2007), 107, https://doi.org/10.4324/9780203088890.
[703] Hofmann, 107.
[704] Hofmann, 111.
[705] Hofmann, 105.
[706] Trachtenberg, *A Constructed Peace*.
[707] Wight, "The Idea of Neutrality," 2023, 89.
[708] Wight, 90.

There was however an important modification to the ethico-normative form of neutrality of the previous century, as neutrals states were now seen as complementary to the role of international organizations in negotiating the European peace settlement. As already mentioned, the fact that Austria hosted IAEA served to legitimise its claims to facilitating détente and world peace. Furthermore, under the umbrella of the CSCE, a chain of diplomatic conferences across different European cities was organised on both sides of the curtain, where nonaligned and neutral states played an important role as providers of good offices and mediation.[709] The agreement provided conditions for political coexistence in Europe. While advancing the short terms goal of human rights in Central and Eastern Europe, its long-term goals was reaching a peace settlement in Europe.[710]

Besides the ethico-normative form, neutrality also acquired a political form in this context, as neutrals and nonaligned states started playing an important role in the transformation of norms of conduct based on nuclear non-proliferation. An important part in the relaxation of the tensions between the two superpowers was arms control, which was a broader concept than the disarmament promoted earlier by the Scandinavian peace movement. As Keith Kraus and Andrew Latham pointed out, it was supposed to 'break out of the fruitless security-disarmament circle by focusing on the *regulation* or *stabilization* of the East-West conflict'.[711] Already in 1946 Frederick Dunne suggested that the only promising safeguard for 'international control of atomic energy is that of inspection'.[712] Policing duty was to be delegated to an organization rather than a state and the United Nations Atomic Energy Commission was set up the same year. It however proved to be dysfunctional mostly because of disagreements between the United States and the Soviet Union and thus deterrence was recognized to be the most effective way of preventing nuclear war.[713] Efforts towards controlling the use of atomic energy emerged again in the 1950s, when the negative attitude towards nuclear weapons in various parts of the world started to grow, as the scale of consequences of Hiroshima and Nagasaki came to the surface, and 'the magnitude of hydrogen bombs developed by the United States and the USSR was growing out of useful proportion'.[714]

[709] Ghervas, *Conquering Peace*.
[710] Ghervas.
[711] Keith R. Krause and Andrew Latham, "Constructing Non-Proliferation and Arms Control: The Norms of Western Practice," in *Culture and Security: Multilateralism, Arms Control and Security Building*, ed. Keith R. Krause (London, UK: Frank Cass Publishers, 1999), 26.
[712] Frederick Dunne, "The Common Problem," in *The Absolute Weapon. Atomic Power and World Order*, ed. Bernard Brodie (New Haven, Connecticut: Yale Institute of International Studies, 1946), 10.
[713] Krause and Latham, "Constructing Non-Proliferation and Arms Control: The Norms of Western Practice."
[714] Yoko Iwama, "The Making of the '1968 Global Nuclear Order,'" in *Neutral Europe and the Creation of the Nonproliferation Regime: 1958-1968*, ed. Pascal Lottaz and Yōko Iwama, Routledge Advances in International Relations and Global Politics (Abingdon, Oxon [UK] ; New York, NY: Routledge, 2023), 42.

Even among some of the defence intellectuals, a shared understanding emerged that the nuclear deterrence was too unstable to control and a disaster could take place regardless of the states' willingness to use the weapons. This understanding was especially fostered by the launch of Sputnik I which created a sense of vulnerability and fear that 'the country lay at the mercy of the Russian military machine'.[715] Rather than planning to regain the upper hand through rapid technological development and rearmament advancements, strategists started to think about regaining security through the channels of diplomacy and unilateral stabilising force deployments.[716] After the Cuban missile crisis a genuine reduction of the East-West tension took place, and a genuine arms control community emerged on both sides of the Iron Curtain.[717] The Partial Test Ban Treaty was signed in 1963 and then the treaty of Nuclear Non-proliferation was negotiated in 1968. Between 1958 and 1960 nonaligned and neutral nations played 'ambitious yet ambiguous roles in the negotiation of […] the Treaty on the Non-proliferation of Nuclear Weapons (NPT)'.[718]

Neutral and nonaligned states, as scholars pointed out, were not only involved in formulation of the final text but were also the initiators. Four nonaligned and four neutral countries took part in the in the Eighteen Nation Committee on Disarmament (ENDC) convening between 1962 and 1969, to make sure that non-bloc voices were heard, although not always heeded.[719] Neutrality and non-aligned countries have been also drivers of change in the international order as they helped to shape and design the norms of that restricted the use and proliferation of nuclear weapons, and thus also shape the balance of power.

Neutrality and development

As already mentioned, non-aligned states or the non-aligned movement also played an important role in the process of détente, being able to assume the ethico-normative and political role in the international order alongside the European neutrals. There is already a sizeable literature with respect to the role of these countries in the Cold War exploring the different ways they shaped the Cold War politics and were shaped by it, however, what is important to

[715] Adler, "The Emergence of Cooperation," 116.
[716] Adler, "The Emergence of Cooperation."
[717] Krause and Latham, "Constructing Non-Proliferation and Arms Control: The Norms of Western Practice"; Adler, "The Emergence of Cooperation."
[718] Hunt, "Neutral and Nonaligned Nations in the Making of the Postcolonial Nuclear Order," 55.
[719] Hunt, "Neutral and Nonaligned Nations in the Making of the Postcolonial Nuclear Order."

mention in relation to the changes in the conceptualization of neutrality is the reification of its link to the concept of development and the role of decolonization.[720]

As the superpower competition unfolded also in Asia and Africa, this involved not only efforts of making these states part of their respective security structures, but also extension of the Soviet and Western models of development. As economic development, industrialization, and application of science in processes of consumption and production became part of the Cold War confrontation, the cultural influence of the British, French and others were pushed out of anti-colonial discourses and practices. In many instances this fostered anticolonial elites' rise to global power, and later establishment of military dictatorships. The newly independent states wanted to modernize, and this transformation was equally 'conceived of as a political act of emancipation from a dependent and otherwise marginal status'.[721]

The meaning of neutralism and nonalignment drew on the earlier concepts of neutralization of the 19th century anti-imperialist movements that advocated for these states to be able to choose their own way of development and independence. The rejection of the Western and Soviet models of development were expressed in the very term non-alignment or neutralism that sought to distinguish these states from the Western or Soviet models of neutrality. While reifying neutrality's earlier connection to development and independence, as discussed in chapter 4, it was now their neutrality which was re-conceptualized in terms of rejection of both, the Western and Eastern model of development competing in the former colonies.

At what is regarded to be the founding conference of the non-aligned movement in Bandung the participants discussed how the process of decolonization was to proceed in the context of the Cold War competition which posed many challenges for the newly established states. The participants of the Bandung Conference and its successors, as Christopher Lee pointed out, rejected the possibility of Western imperial control returning to Asia and Africa

[720] Lorenz M. Lüthi, "The Non-Aligned Movement and the Cold War, 1961–1973," *Journal of Cold War Studies* 18, no. 4 (October 1, 2016): 98–147, https://doi.org/10.1162/JCWS_a_00682; Thomas Fischer, Juhana Aunesluoma, and Aryo Makko, "Introduction: Neutrality and Nonalignment in World Politics during the Cold War," *Journal of Cold War Studies* 18, no. 4 (October 1, 2016): 4–11, https://doi.org/10.1162/JCWS_a_00677; Jussi M. Hanhimäki, *Neutrality and Neutralism in the Global Cold War: Between or within the Blocs?*, ed. Sandra Bott, Janick Marina Schaufelbuehl, and Marco Wyss, 1st ed. (Routledge, 2015), https://doi.org/10.4324/9781315715001; Jürgen Dinkel, *The Non-Aligned Movement: Genesis, Organization and Politics (1927-1992)* (Leiden, The Netherlands: Brill, 2018), https://doi.org/10.1163/9789004336131; Nataša Mišković, Harald Fischer-Tiné, and Nada Boškovska, eds., *The Non-Aligned Movement and the Cold War: Delhi – Bandung – Belgrade*, First issued in paperback, Routledge Studies in the Modern History of Asia 96 (London New York: Routledge, Taylor & Francis Group, 2017).

[721] Rinna Kullaa, "Roots of the Non-Aligned Movement in Neutralism. Yugoslavia, Finland and the Soviet Political Border with Europe," in *Neutrality and Neutralism in the Global Cold War: Between or within the Blocs?*, ed. Jussi M. Hanhimäki et al., 1st ed. (Routledge, 2015), https://doi.org/10.4324/9781315715001.

while concurrently embracing a program of postcolonial modernity— economic, political, and cultural in scope— at national and intercontinental levels'.[722]

Non-alignment excluded membership in military alliances to the extent that these involved Great Power competition. As the as the criteria for a non-aligned country at the preparatory meeting for the movement's first conference in 1961 laid down, a non-aligned state could not be 'a member of a multilateral military alliance concluded in the context of the Great Power conflict; if it has a bilateral military agreement with a Great Power or if it is a member of a regional defense pact, such an agreement or pact should not be deliberately concluded in the context of the Great Power conflicts'.[723] Like the European neutrals, the nonaligned states did not allow establishment of military bases on their territories.

The nonaligned states also included some European states such as Yugoslavia or Malta, which however, unlike permanent neutrals, could form regional alliances, and openly supported the decolonization struggle in the Third World, while also contributing to efforts of disarmament and peaceful coexistence.[724] Nonaligned countries together with European countries played a considerable role in negotiations about how the two systems could coexist. At the same time, non-alignment and neutralism, became a political project that aimed to transform the international order and its democratization, which would allow them to be recognised as equal members of international society, free from colonial interventions.

These countries' freedom of development outside of the extreme contestation between the superpowers came to be seen as part and parcel of neutralization among IR academics yet again, as neutralization was supposed to be exported to the non-European areas that could be potential sources of crises. In the context of war in Vietnam, neutralization was yet again suggested as an alternative 'technique' for 'preserving, bolstering, or restoring international order' that drew on various layers of the concept of neutrality.[725] These ideas were introduced by Cyril E. Black, Richard A. Falk, Klaus Knorr, and Oran R. Young at the Center for International Studies at Princeton University in a piece commissioned by the Senate Foreign Relations Committee in 1966 and published in 1972.

While acknowledging that the anarchical structure of the system makes states pursue antagonistic goals and continuously increase their gains on account of their competitor, even if

[722] Christopher J. Lee, "The Bandung Conference," in *The Oxford Handbook of History and International Relations*, ed. Mlada Bukovansky et al., 1st ed. (Oxford University Press, 2023), https://doi.org/10.1093/oxfordhb/9780198873457.001.0001.
[723] Fischer, Aunesluoma, and Makko, "Introduction," 8.
[724] Wolfgang Mueller, *A Good Example of Peaceful Coexistence? The Soviet Union, Austria, and Neutrality 1955 - 1991*, Zentraleuropa-Studien, Bd. 15 (Wien: Verl. der Österr. Akad. der Wiss, 2011).
[725] Cyril E. Black et al., *Neutralization and World Politics* (Princeton, N.J: Princeton University Pres, 1968), 12.

they might be reluctant to do so, the authors argued that states also shared incentives to cooperate in situations that can 'escalate uncontrollably into a hazardous military encounter'.[726] Drawing on earlier ideas from Greene, neutralization was articulated as a 'tool for restraining the use of international coercive power' that would eliminate instability in areas where the medium and great powers recognise to have a common interest to do so.[727] The goal was to remove minor states which are or are threatened to become targets of the struggles over control by regional or global rivals.[728] The modified status of neutralization as a restrainer of great power politics was thus yet again articulated as a passive status when applied to these countries. This conception of neutrality however did not include issues such as nuclear disarmament, as 'the control, or the limitation of the dissemination, of nuclear and other weapons' was seen as 'a separate and distinct issue from that of the neutralization of states', the authors claimed.[729]

The established definition of neutralization needed to be broadened enough so that it could acquire 'more content', according to Black et al. Neutralization was defined as 'a special international status designed to restrict the intrusion of specified state actions in a specified area'.[730] This rather broad definition then focused on three areas of conflict management that would restrain the exercise of power in the international system – conflict termination, conflict moderation, and conflict avoidance. It encompassed the functions formerly associated with the law of neutrality like limiting the scale of violence, or the later notions of neutralization as war prevention, which were now subsumed under the concept of conflict management. Neutralization came to be linked with a new language of the emerging subfield of conflict and peace studies, that was to later become associated with the liberal peace agenda.

At the same time neutralization was supposed to provide these nations freedom to choose their own form of government and model of development by removing them from the superpower competition. Development of these societies according to their own fashion was seen as part and parcel of the management of international order and a necessary precondition for its stability. Although as the authors note when discussing Southeast Asia, neutralization might also open the way for an 'organized program of economic and political development' through developing impartial mechanisms which were also seen as essential for managing power in this region.[731] Although the organised form of development was seen as a follow up possibility after neutralization of these societies is put in place, it would later on become an

[726] Black et al., 7.
[727] Black et al., 6.
[728] Black et al., *Neutralization and World Politics*.
[729] Black et al., 65.
[730] Black et al., xi.
[731] Black et al., 160.

important part of international organization's in the 'problem areas' in which development according to the liberal democratic model of government would become packaged together with peace-keeping and peace-building operations.

Black et al. considered neutralization as being able to remedy the shortcomings of the UN, and an 'instrument of peacekeeping complementary to the activities of the UN'.[732] And vice versa, the UN could then support neutralization with 'negotiation, supervision, control, and enforcement'.[733] The authors then provided a template for neutralization agreements which would standardise, and effectively also depoliticise this practice. Neutralization was seen as a sort of power management where the responsibilities would be shared between the great powers that would provide security guarantees, while the international organization would police the arrangement. The concept of neutralization was to be institutionalised through an order based on great powers and international organisations both being the custodians of the order. This not only blended the legal and ethico-normative forms of neutrality together, but it was also a prelude to the transformation of the role of international organisations in the post-Cold War period. In the course of the Cold War, international organisations gradually acquired the roles previously associated with neutrality, eventually being the only actors to claim the ethico-normative role in the international order, and neutral states being reduced to host countries of these bureaucracies.

While this chapter did not cover the life of the concept during the whole period of the Cold War and its immediate aftermath, which has already been to a great degree covered in the literature of international relations, it presented a pattern of the concept transformation, which is relevant for its discussion the post-Cold War period and the debates that followed. In this chapter I identified a continuous pattern of reification and contestation of neutrality, focused on its definition as a 'free space', and how it developed in relation to the interrelated problems of nuclear weapons, ideological competition, and decolonization. The conceptual modifications of this period were important for conditioning the transformation of the ethico-normative role of neutrality under the auspices of international organisations and how it played out in the post-Cold War period, on which I will further reflect in the concluding chapter.

[732] Black et al., xviii.
[733] Black et al., xviii.

Conclusion

The life of the concept of neutrality that this thesis has analysed comes to a full circle in the post-Cold War period when the ethico-normative form of neutrality was assumed by the international organisations as autonomous actors having a role reminiscent of the pope and the church as discussed by Jean Bodin. Although the activity of neutral states increased towards the end of the Cold War and scholars have pointed out neutrals' continuous influence, there was in parallel a growth in the importance of international organisations and a decrease of the agency of neutrals within the international order, as the previous chapter indicated. In conclusion I will further discuss how international organisations' authority and autonomy were legitimised through the ethico-normative form of neutrality which marginalised the meanings previously associated with this form in terms of the social status of the neutral state, or the historical mission of the 'common friend'. I will then further show how the post-Cold War evolution of the concept of neutrality can be seen as a continuation of discussions that have been taking place since much earlier, and how the ongoing contestations of neutrality on the level of governmentality and sovereignty can be analysed through these four forms of neutrality.

Bureaucratising the ethico-normative form of neutrality

The end of the Cold War was seen as, what Francis Fukuyama famously defined in 1989, the 'end of history', professing the 'end point of mankind's ideological evolution and the universalisation of Western liberal democracy as the final form of human government.'[734] Although Fukuyama has often been quoted as predicting an optimistic view of the future after the end of the Cold War, he in fact, claimed quite the opposite. The disappearance of ideological conflicts would not end international conflicts per se, but rather make them part of the 'post-historical world', in which the struggle for recognition and idealism of the Cold War will be replaced by 'economic calculation, the endless solving of technical problems, environmental concerns, and the satisfaction of sophisticated consumer demands'.[735] The world will be divided between those 'at the end of history' and those 'still in history', was the prediction.[736] The end of history rather implied a return of the teleology of progress which

[734] Francis Fukuyama, "The End of History?," *The National Interest*, no. 16 (Summer 1989): 3.
[735] Fukuyama, 18.
[736] Fukuyama, "The End of History?"

deemed conflicts between states as not belonging to the current timeline, similarly to how the interwar liberal internationalists deemed neutrality, along with wars, as belonging to a past defined by anarchy. Within the discourse of order based on the dominance of international organisations and their expertise, neutrality thus belonged to history.

To normalise what Chantal Mouffe called a 'post-political' vision that liberal democracy is the highest stage of political-economic development, and its universalisation will lead to peace, prosperity, and worldwide implementation of human rights, the agency of international organisations (IOs) has been crucial.[737] Following the end of the Cold War, IOs have become central to world politics like never before, and as in the interwar period, this teleological narrative spelled out neutrality's death and irrelevance. Soon after, however, a new scholarship emerged, emphasising the continuous importance of neutrality and its transformation beyond recognition in the post-Cold War. The shifts in the conceptualisation of neutrality are reminiscent of the interwar period, when the meaning of neutrality was adjusted to be in line with the goals of the international organisations. As Agius noted, the idea of the EU as a normative power or 'peace project' appealed to the 'former neutrals' for it enabled them to 'see the EU as a continuation of their own 'good offices'[…], making deeper security cooperation compatible and commensurate with established norms'.[738] In this sense neutrality and the post-Cold War order, based on the predominance of international organisations, were seen as compatible or even complementary, as they came to be regarded as the ultimate peace projects – whether this was the UN or even the EU. Although they may be seen as complementary, what took place was the decrease of agency of states as neutrals and transfer of this ethico-normative status of neutrality to the international organisations.

This association between neutrality and an international organisation emerged for the first time among members of the Institute of International Law in the context of colonisation in the late 19th century, although on a much more modest scale, as I discussed in chapter 4. It was articulated as a means of 'internationalising' the European order and overcoming the jealousies among the European powers, uniting them in their civilisation mission. Neutralization of the Congo was to proceed through and be guaranteed by a neutral international organisation as an administrative and apolitical body of a disinterested and international character which would unite everyone in the great task of exploring Africa. This apolitical body had however a very political mission, as neutrality was seen as the means of creating a new type of international order outside of the European concert system based on the

[737] Chantal Mouffe, *On the Political* (Psychology Press, 2005).
[738] Agius, "Transformed beyond Recognition?," 380.

great power management. It was meant to 'internationalise' non-European societies. This 'apolitical and disinterested' character of the international organisation was given a new, short-lived, institutional expression during the interwar period in the form of League of Nations, serving as a machinery of peace and justice which would maintain order through policing, as discussed in chapter 5.

During the Cold War, the policing function of the United Nations started to be seen as complementary to the role of the great powers in setting up permanently neutral territories, as chapter 6 showed. The governmentality logic began to enter the picture, modifying the legal form of neutrality as scholars tried to come up with a standardised way of implementing neutralization agreements in 'problem' or 'risk' areas, which would eventually eliminate the agency of states from the picture. At the same time, the United Nations also started claiming an ethico-normative role as international bureaucracy turned peace into an 'operation' that would be conducted by the organisation's experts in the field. The UN started to undertake peace-keeping operations as early as 1950s, when the Swedish then-secretary Dag Hammarskjöld announced the establishment of a neutral force which was to take the place of France and Britain in the conflict between Israel and Egypt. Fifteen peace keeping operations were conducted between 1956 and 1988, and this first generation of peacekeeping missions operated under the rules of 'consent, neutrality, and impartiality'.[739] The fact that these peacekeeping operations were announced under the leadership of a Swedish secretary should not come as a surprise, given the history of Swedish neutrality and its emphasis on peace and disarmament.

In the post-Cold War period, the scope of actions associated with the ethico-normative form of neutrality exercised by the IOs has significantly expanded, which was conditioned by a broadening and deepening of the concepts of peace, security, and development. Neutrality came to be linked with a chain of concepts which had been effectively emptied out of their earlier content. Michael Barnett and Martha Finnemore pointed out that as the definitions of peace and security were widened, the UN Security Council became involved also in domestic conflicts, fundamentally changing the social purpose of peacekeeping operations that were now supposed to promote development of democratic institutions and rule of law.[740] 'As UN peacekeeping blurred into peacebuilding, and as security melded into development, departments that once had a relatively solitary existence now had to coordinate their relations

[739] Michael Barnett and Martha Finnemore, *Rules For The World: International Organizations In Global Politics* (Cornell University Press, 2004), 127.
[740] Barnett and Finnemore, *Rules For The World: International Organisations In Global Politics*.

and activities across the UN system'.[741] The UN however, was by no means the only organisation claiming this ethico-normative form through expert knowledge. As Matthias Schmelzer described it, the success of OECD rested on the 'technical scientific and politically neutral aura of growthmanship'.[742]

While in the earlier Cold War discussions of neutralization by Black et al. neutralization of the territories was seen as a precondition for the countries' capacity to choose their own way of development, and to eventually allow for some forms of organised development aid, in the post-Cold War period, development of these 'problem areas' according to the liberal democratic norms became the end goal of international organisations, with security and development concerns being merged together into what came to be known as the 'security-development nexus'.[743] The international organisations started to define the scope of rights on both, the domestic and international level, even re-creating entire states with organisations such as the IMF, the UN or the OSCE which were 'entrusted with drafting new constitutions and judicial arrangements, re-creating financial institutions, and creating civilian police'.[744] These developments thus appear to be a continuation in the replacement of the order based on great power management and their guarantees established in the 19th century by an order of police with a much more expanded scope of responsibilities. As Barnett and Finnemore argued, the IOs had been constructing and constituting the social world and through their rules, creating 'new categories of actors, form[ing] new interests for actors, defin[ing] new shared international tasks, and disseminate new models of social organisation around the globe'.[745]

Although as Iver B. Neumann and Ole Jacob Sending argued, this did not eliminate state and sovereignty from the picture. Analysing the post-Cold War order through the lens of governmentality, they argued that states in fact remained the 'core epistemic entry point and target for governing'.[746] That means that IOs strove to 'govern and act on states' and although these 'states are measured, evaluated, and acted upon from within a largely liberal and neoliberal political rationality, there is always an inescapable institutional state focus on what IOs generally do'.[747] As they further point out, the 'fragile and failed states are central to and reflective of a distinct 'police character' of global governance, where prevention and detailed

[741] Barnett and Finnemore, 130.
[742] Marieke Louis and Lucile Maertens, *Why International Organisations Hate Politics. Depoliticizing the World* (London and New York: Routledge, Taylor & Francis Group, 2021), 147.
[743] David Chandler, "The Security–Development Nexus and the Rise of 'Anti-Foreign Policy,'" *Journal of International Relations and Development* 10, no. 4 (December 2007): 362–86, https://doi.org/10.1057/palgrave.jird.1800135.
[744] Barnett and Finnemore, *Rules For The World: International Organisations In Global Politics*, 3.
[745] Barnett and Finnemore, 3.
[746] Iver B. Neumann and Ole Jacob Sending, *Governing the Global Polity: Practice, Mentality, Rationality* (Ann Arbor: University of Michigan Press, 2010), 137.
[747] Neumann and Sending, 137.

regulation is at work and always aims to 'govern more''.[748] Sovereignty, likewise, did not disappear but rather acquired a different form, constituted through governmental rationalities that shape its content and status.[749] Or as Jens Bartelson put it, the governmentalisation of state sovereignty meant that it 'is no longer best understood as a constitutive attribute of states, but rather as something akin to a grant contingent upon its responsible exercise in accordance with the norms of the international community'.[750] The specific governmental rationalities are determined by the functionally differentiated world spheres of governing such as development, security, economy, and so on.[751]

The governmental rationality of ordering that Neumann and Sending analysed points to a connection between the ethico-normative form of neutrality that neutral organisations claim and the role of the Church and pope in the medieval period that this thesis started with. With the scope of concepts associated with this position such as security and development being extended all the way down to the individual level, with a wide array of social issues ranging from poverty, unemployment, to psychological well-being being included in these concepts, it comes close to how the church was governing the souls, through the discourse of mystical body of Christ (discussed in chapter 1). Within the governmentality logic, states cannot exist as legitimate members of international society outside of the norms and standards of behaviour set out by international organisations. The claims of a universal authority being grounded in the knowledge of theologians who had the monopoly on the interpretation of the word of God resembles the expert staff of the organisations whose technical language alienates large parts of the populations whose standards of good governance they define. Societies and individuals are not to be remodelled to the image of the God but rather to the image of the Western liberal model of democracy. The ethico-normative form of neutrality attributed to the IOs thus became no longer simply about bringing together and mediating between belligerents, a matter of diplomatic practice, but was extended together with the scope of actions that the international organisations conduct, and which are embedded in governmentality rationalities.

Although Fukuyama predicted at the end of the Cold War that the post-historical world will be one of boredom, history came knocking soon after, followed by new contestations of liberal governmental rationalities through different forms of sovereignty. The 'unstable politico-epistemic configuration' which characterises the governmentalisation of politics fosters a tension between the universalist drive in governmentalist rationalities and a 'resistance

[748] Neumann and Sending, 156.
[749] Jens Bartelson, *Sovereignty as Symbolic Form* (Abingdon, Oxon: Routledge, 2014), 69.
[750] Bartelson, 68.
[751] Neumann and Sending, *Governing the Global Polity*.

to and possible exit from this governmental rationality offered by the universal *form* of sovereignty'.[752] The principle of sovereignty while being the main goal and vessel of universal liberal governmentality simultaneously allows for particularism, and thus also the resistance to and exit from it.[753] The current contestations of the concept of neutrality by different actors also reflect this tension between governmentality and different forms of sovereignty resisting it.

Resisting governmentality through neutrality

The current process of contestation and transformation of neutrality draws on the different layers of the concept which have been acquired over the course of the history, that re-produce four different forms of neutrality in international order. These forms, I argue, have been conceptualised into existence as a result of specific social and political conditions of that time.

The strategic form of neutrality was a result of the efforts to separate politics from theology during the transition to a new order in the turmoil of the sixteenth century. With multifaceted motivations for alliance making which were no longer conditioned by a common action aligned for the sake of common faith, neutrality as a concept was reduced to a strategy of individual princes/states. During the period of Renaissance and Reformation, the concept acquired new meanings in relation to preservation and expansion of the prince's 'state'. The strategic significance of neutrality was thus derived through consideration of the relative position of power to others or the temporal advantage it granted to the ruler, becoming a subject of analysis of the reason of state/interest.

The ethical-normative form of neutrality emerged as a solution to conflicts resulting from claims of unbounded political authority and the problem of universal empire. It was a response to the Machiavellian scepticism of the human nature. This conception was first articulated by Jean Bodin who argued that a neutral prince who exceeded others in greatness should be vested with the responsibility of restoring balance of power through arbitration and mediation.[754] It took into account the status of a sovereign who would perform the function of the common friend, while embedding it in a rudimentary version of the international law. Neutrals were seen as co-constitutive of the 'international society' (to the extent it was

[752] Neumann and Sending, 68.
[753] Neumann and Sending.
[754] Jean Bodin, *The Six Bookes of a Commonweale. Written by J. Bodin a famous lawyer, and a man of great experience in matters of state. Out of the French and Latine copies, done into English, by Richard Knolles*, trans. Richard Knolles (London: Im, 1606), https://doi.org/10.4159/harvard.9780674733169.

imagined) by having an active role in maintaining and shaping the balance of power. This form was what Martin Wight would much later call, the 'critical conscience of the international society'.[755]

The legal form of neutrality emerged as a response to the growing importance of the sea and overseas trade as the European commercial empires formed in the seventeenth century. This required re-embedding politics within a shared legal structure that would determine the rules and limit the scope of actions of expanding empire-states through a framework which defined their shared interests. This form refers to neutrality as a legal status, thus extending it from the person of the sovereign and their will to sovereign's territories, as well as the spaces and objects of their trade. It determined the rights and duties that neutrals had in relation to war through the framework of the natural law of nations, in order to limit the scale of violence associated with war and protect the property of those not participating in wars, allowing them to freely trade with belligerents.

The political form of neutrality refers to neutrality's capacity to modify the order as a vehicle of change. It functions on two levels, and thus, is distinct to the other three forms. At the level of international society, it serves to bring about changes to the different elements of international society and the order itself. This form was historically first to emerge, together with the concept of neutrality itself, which was taken out of the context of medical discussions of the body and its health. Being introduced then as a solution to the Great Western Schism the use of the concept allowed for rearticulation of the authority of secular rulers as being ontologically separate from the pope, contributing to the separation of politics from theology and the gradual establishment of an autonomous sphere of action with its own rules, goals, and norms. At the same time, the political form functions on another level in which it encompasses the process of modification and reification through which neutrality was linked to a chain of new concepts, while marginalising its previous attachments to health in the process of its rearticulation. The political form thus operates simultaneously to the other three, as the processes of contestation of concepts are almost always present, although in different intensity. And it is through this process of contestation that the international society itself gets re-constituted.

These different forms continued to re-emerge throughout different historical periods, drawing on different layers of the concept that reify some meanings while marginalising others in the process. With the ongoing transition of the international order, the concept of neutrality

[755] Martin Wight, "The Idea of Neutrality," in *Foreign Policy and Security Strategy*, by Martin Wight, ed. David Yost, 1st ed. (Oxford University PressOxford, 2023), 90, https://doi.org/10.1093/oso/9780192867889.003.0005.

has been yet again subject to contestation by different actors, who re-introduced different forms of neutrality. These re-definitions of the concept also reflect the resistance to governmental rationalities by different forms of sovereignty in relation to the 'crisis' and war in Ukraine, which has been perceived as one of the symptoms of the ongoing transition and change of the order and the increasing decline of the shared understanding about its normative structure.

The first contestation has materialised in relation to the ethico-normative role of neutrality which has been reclaimed from international organisations by states such as Belarus, which were previously seen as inhabiting the margins of international society for not conforming to good standards of government. This ethico-normative role was re-anchored by the Belarusian leadership in conceptualisation of the state's cultural proximity to both, the East and West, marginalising the link of neutrality with the expert knowledge and epistemic superiority. Belarus offered to mediate the 'crisis' in 2014, functioning as a 'common friend' on the grounds of its cultural proximity to both East and West, which was facilitated through re-engagement with the history and culture of the Grand Duchy of Lithuania while emphasising the peaceful character of its foreign policy and its history as a nonaligned and neutral country.

Belarus provided the grounds for negotiating a ceasefire in Ukraine, the result being the so-called Minsk agreements, accompanied by the claims of Belarusian president that the country served as the bridge between the East and West. Lukashenka, even went as far as suggesting organising a new Helsinki process within the framework of the OSCE, trying to reassert a more important role for neutral states.[756] This form of sovereignty claim reversed the characteristic of governmentalisation of sovereignty that privileges the international sphere over the domestic, in that its constructed peacefulness and civilisational mission were projected to the outside.[757] At the same time this construction also allowed resistance to the claims of Russia's sovereignty over the civilisational space of the Russian World to which Belarus is seen as integral, by turning it into a civilisational crossroad.

These claims are rather similar to how Belgium defined its neutrality as a historical mission in the 19th century (discussed in chapter 4), seeking to redefine its international status as a semi-sovereign who cannot exist outside of the will of the Great Powers. This form of neutrality was also political to the extent that it allowed Belarus for some time to improve its status as an international pariah and escape their international isolation. It thus contributed to

[756] Alyaksandr Lukashenka, "Helsinki-2 Initiative Deemed Vital for Common European Security," Official Website of the Republic of Belarus, July 17, 2019, https://www.belarus.by/en/government/events/helsinki-2-initiative-deemed-vital-for-common-european-security_i_0000101448.html.
[757] Bartelson, *Sovereignty as Symbolic Form*.

re-ordering on the level of international society by modifying the standards of legitimate statehood.

Belarus was not the only one putting in such effort as a bridge-builder and modifying the ethico-normative form of neutrality claimed by IOs. Similarly, Turkey who had also been deemed as a pariah state because of its non-democratic government under the president Recep Tayyip Erdogan, who negotiated the grain deal between Ukraine and Russia, described the Black Sea initiative, as a 'bridge of peace', and recently offering to host a new peace summit in effort to negotiate a 'fair peace'.[758] At the same time Russia dismissed the claims of the ethico-normative form of the traditional European neutrals, the Swiss, who were seen as losing their neutral status because they 'joined illegal Western sanctions against Russia' and added them to the list of 'unfriendly countries'.[759] The upcoming peace summit organised by Switzerland is thus set to proceed without one of the parties to the conflict. There are different actors trying to modify the meaning of ethico-normative form of neutrality in attempts to contest Western liberal norms of government.

Contestation has likewise been taking place in relation to the legal and strategic forms of neutrality with the suggestions of turning Ukraine into a permanently neutral state/to neutralize it, and this idea was supported by both Russia and Ukraine initially in the process of consensus finding. For Russia, this idea of permanent neutrality has been informed by particular legal and strategic conceptualisations of neutrality. The Russian understanding of permanent neutrality draws partially on the 19th century legal conceptualisation of permanent neutrality or neutralization, which rendered these states as semi-sovereign and lacking free will. It rests on an idea of order which is upheld through the positive of law defined by the Great powers who occupied a privileged position in the international order, being those 'granting' sovereignty to these states instead of the IOs. This is also reflected in a recent statement of Vladimir Putin claiming that Belgium 'would not appear on the map were it not for Russia and its position', referring to neutralization of Belgium by the European concert of the 19th century.[760]

In relation to Ukraine, the permanent neutrality was articulated by one of the members of the Russian Academy of Sciences Alexey Gromyko who suggested that it should be applied

[758] Zehra Nur Düz and Merve Berker, "Türkiye to Continue Efforts for 'Fair Peace' between Russia, Ukraine: President Erdogan," *AA*, August 3, 2024, https://www.aa.com.tr/en/russia-ukraine-war/turkiye-to-continue-efforts-for-fair-peace-between-russia-ukraine-president-erdogan/3159672.
[759] S. W. I. swissinfo.ch, "Russia Rejects Protecting Power Mandate Agreed by Switzerland and Ukraine," *SWI Swissinfo.Ch* (blog), August 11, 2022, https://www.swissinfo.ch/eng/politics/switzerland-and-ukraine-agree-draft-protecting-power-mandate/47817660.
[760] Vladimir Putin in Seb Starcevic, "Belgium Exists Largely 'Thanks to Russia,' Putin Claims," *POLITICO*, March 7, 2023, https://www.politico.eu/article/belgium-exists-thanks-to-russia-putin-claims/.

to ‘Ukraine, Moldova or Georgia, buttressed by certain international treaties like it was in the case of Austria’.[761] This statement was a rearticulation of the earlier ideas of creating a wall of neutral states and excluding them as a locus of great power competition for the sake of preserving the order. This permanent neutrality would however not be backed by military capability of the neutral state, but rather through its demilitarisation according to the Scandinavian model of neutralization. This would turn Ukraine into something akin to the Cold War power-empty space. By virtue of this treaty, neutralized states would have an obligation to stay demilitarised, as Gromyko claimed, although the details of this arrangement, which was discussed in 2022 between Russia and Ukraine remain undisclosed, and consensus could not be reached.

The strategic form of neutrality informs this conception of neutrality to the extent that this arrangement is also portrayed as a security decision for Russia, the sovereignty of which was extended to include what has been considered to be the Russian civilisational space – in this specific case, the Russia-backed Donbas separatists whose rights Russia claims to have a responsibility to protect. As Gromyko argued Russia needed a guarantee that eventually ‘a third country would not decide to sell to or deploy in Ukraine strike systems that will endanger Russia’s security’ or that Ukraine itself may attack territories such as the Donbas, trying to draw NATO into a military conflict with Russia.[762] With claims over the Russian-speaking population in Ukraine and ‘protection of minorities’, neutrality of Ukraine is seen also as a strategic choice for Russia.

A permanently neutral status was initially deemed as acceptable to the Ukrainian leadership which sought guarantees similar to NATO’s Article 5 defence clause although the talks in spring 2022 eventually failed as the details of the agreement of the legal status of neutrality could not be reached. The failure of peace talks with Russia led to a much more radical position by the Ukrainian leadership towards the neutrality of other countries, as Zelensky introduced the new peace plan in the UN in September 2022. The Machiavellian understanding of neutrality as self-interest was invoked in which neutrals could only ever be ‘false friends’ who create ‘conditions for war’. Ukraine’s just war was presented as being in accordance with Article 51 of the UN Charter and was linked to the concepts of criminal law in which aggressors needed to be punished, and no one could stand ‘indifferent’. In this sense, the peace formula of Ukraine was presented as an extension of the order based on outlawing

[761] Alexey Gromyko, “What Is Driving Russia’s Security Concerns?,” European Leadership Network, January 20, 2022, https://www.europeanleadershipnetwork.org/commentary/what-is-driving-russias-security-concerns/.
[762] Gromyko.

and punishing 'illegal wars', in which neutrality was considered as immoral or compromising the vision of peace. Resistance to claims of Russian sovereignty was presented as being compatible with the policing function of the UN.

The impossibility of neutrality as both, a strategic and ethico-normative role, was in 2024 articulated also by European policy experts, such as Franz Stefan Gady, who considered neutrality as an obstacle to the development of common European security and defence policy, and thus also to governmentalisation of security that would allow for the management of future military risks through a common policy framework. Austria and Ireland were 'defacto NATO militaries' because they have 'adopted NATO standards for operational concepts, doctrines, procedures, and munitions', he argued, and they had to be further disciplined through the standards of military spending defined in terms of GDP.[763] This governmental logic inevitably rendered neutrals as 'free riders' whose low contribution to military spending allows them to profit from the security arrangements. With the looming military crisis, neutrality will eventually threaten the security of not only the neutral states but also of the whole bloc. Sweden and Finland's entry into NATO confirmed the obsoleteness of this security strategy, Gady proclaimed. The role of neutrals as mediators and conveyors was 'not borne out by history' according to the author and the importance of Geneva or Vienna for diplomacy was due to their superior infrastructure, rather than their position as neutrals.[764] This universalist vision of order required complete identification with the security structures, trying to reify the negative meanings attached to neutrality that condemned it to disappearance.

While the concept of neutrality is currently contested and in the process of transformation, looking at current articulations of this concept through the framework of these four forms gives a better grasp of the process of institutional contestation itself and how we can make sense of it. Introducing this framework also highlights that the repertoire of conceptualisations of institutions, such as neutrality, remains to a considerable extent constrained by their past articulations which can be re-traced through a macro-historical analysis. By redefining the debates of both scholars and practitioners through the framework of four forms of neutrality we can also grasp how the process of contestation is unfolding on the level of governmentality and different forms sovereignty, which is characteristic of the contemporary (dis)order.

[763] Gady, "Why Neutrality Is Obsolete in the 21st Century."
[764] Gady.

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