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Antonella Alimento (ed.)

War, Trade and Neutrality: Europe and the Mediterranean in the Seventeenth and Eighteenth Centuries

The present work, edited by Antonella Alimento (Pisa), assembles contributions presented at different scientific meetings in the research project *Empires and small states: War and neutrality between the Peace of Westphalia and the Continental Blockade*, a joint undertaking by the Universities of Paris I, the EPHE, Pisa, Rotterdam and Seville.

In her introduction, Antonella Alimento suggests that the Mediterranean was a more decisive region in seventeenth- and eighteenth-century Europe than traditionally assumed. The study of 'the configuration of political and commercial relations between states of different sizes and "constitutional" structures' (10) ought to reveal concepts and practices of big, medium and small-sized European powers. Not only in times of conflict between states, but foremost – according to Lucien Febvre's incitation – in times of peace, when different levels of governance and authority intervene to regulate interactions (14). The study of international law as such is not at the heart of this collection, but the role of law as a factor among others, closely linked to specific actors and their strategies. As a result, an intrusive and thorough dialogue between primary sources and theoretical insight provides a unique panorama of diplomacy and consular institutions, domestic legislation and sovereignty versus the inter-state *realpolitik*, economic theory and law of nations doctrine, encounters with extra-European powers and transnational intellectual history.

Manuel Herrero Sánchez's essay ('Republican Diplomacy and the Power Balance in Europe') is a variation on a well-known theme, that of the origins

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of modern diplomacy in the Italian republics. Yet, his use of Spanish archival material is revealing. Herrero Sanchez illustrates the origin of the ambassadorial institution with examples drawn from Genoese noblemen in Spanish service. Genoese oligarchies imposed themselves as the court's bankers, managed to marry into the main Spanish noble families, obtained positions in the monarch's governing councils and were essential to the management of the 'disaggregated and dispersed structures' of the Empire (40). Genoa, like Venice, looked at the diplomatic service as an essential state function. It made diplomatic service abroad compulsory within the *cursus honorum* for municipal civil servants (29). The introduction of Italian institutions and practices in the Spanish monarchy were thus the product of a broader transnational integration across different fields of action into a 'distinctly cosmopolitan political culture in Europe' (33). Under Spanish military protection during most of the sixteenth century, the *de iure* still independent Republic of Genoa opted for neutrality after the Peace of Westphalia. Herrero Sanchez argues its legacy in Spanish and European diplomacy was lasting.

Marcella Aglietti's contribution focuses on the consular institution, the 'transformation of its legal basis and the consequent restructuring of its relationship with sovereign authority' (41). Taking as an example the expulsion of the consuls of Genoa, Venice and Lucca from Spain during the War of the Spanish Succession (1711), Aglietti demonstrates to what extent consuls were seen as true representatives of their sovereign, and not just as patrons for private individuals (43). The Spanish decision to exclude the Italian consuls was linked to their states' attitudes in recognizing Charles of Habsburg, competitor to the Spanish throne. Consuls also acted as information hubs, coupling their personal commercial network with state policy, an activity bordering on espionage. Yet, public/private distinctions remained blurred, most of all when consuls turned out to be active merchants themselves (44). The free port of Livorno in the Grand Duchy of Tuscany did not recognize foreign consuls as public ministers (46). However, when war broke out in Europe, the Governor (acting on the Grand-Duke's behalf), systematically negotiated neutralization conventions with them, 'representing their sovereigns and agreeing the form and content of the document'. Understandably, sovereigns refrained from allowing their subjects to act as consuls for another nation. A double loyalty was a potential disloyalty to one of the parties involved (49). For neutral states, their own nationals' consular behaviour could create diplomatic incidents (51). Accepting to bear the coat of arms or wear another state's uniform equalled forfeiting one's Tuscan nationality and nobility (52). Similar rules applied in Genoa, leading to a penury in suitable candidates. The contribution of Francisco Javier Zamora Rodríguez builds further on this, illustrating the

'versatility' (67) of consuls as active merchants and state agents (56) using the example of the Florentine Ginori brothers, acting as consuls in Cádiz, Seville and Lisbon, in the second half of the seventeenth century.

Daniele Edigati devotes his article to a specific piece of legislation: the 1748 maritime edict by Francis Stephen of Lorraine, Holy Roman Emperor, in his capacity of Grand Duke of Tuscany. The text, based on an imperial norm issued two years earlier (71), was an Enlightenment-inspired recompilation of existing maritime rules drawn from the *Consolado del Mare*, Colbert's *Ordonnance Maritime* or Florentine case law. The Grand Duchy regulated ship documentation, excluded the recruitment of non-Tuscan crew when a ship hoisted the Tuscan flag, imposed letters patent and passports for ships, as well as state-exams for captains (74). The edict created a Council of Commerce with judicial competence, presided by the governor of Livorno (73). In view of the policy implications of maritime seizure, parties had no right of judicial appeal, but only an administrative recourse with the Minister of Finance. The author deplores the absence of systematic private law codification, in contrast to France, and characterizes the edict as an example of Italian-style 'contingent regulatory power, targeted and rarely systematic' (80).

Franco Angelini treats the landmark norm that established Tuscany's eighteenth-century neutrality in 1778. Conflicts between the lawyers Pierallini, who initiated the text, and Neri, who opposed it, as well as Florentine reticence against proceeding *motu proprio*, accounted for an elaboration process of no less than ten years (83). French occupation of Corsica in 1768, potentially disturbing the balance in the Mediterranean, prompted the Tuscan lawyers. Pierallini thought Tuscany could unilaterally decide on the roles it would impartially apply on third state vessels, whereas Neri thought 'that a law of neutrality would only work if accepted by the belligerent powers which, because of their overwhelming naval forces, would decide whether to comply with such regulations on the basis of military power rather than their reasonableness or legal merit' (87). Angelini sees here an opposition between, on the one hand, a self-confident national strand of argumentation, drawn from Vattel, and, on the other hand, a more cautious approach, preferring internationally guaranteed obligations to unilateral proclamation, conforming to Pufendorf's teachings (100). Pierallini's project was almost a provocation. He aimed to unilaterally extend Tuscany's territorial waters to five nautical miles, dismissing Bynkershoek's classical measure of a cannon shot (88), proposed to allow belligerents the construction or purchase of merchant ships – considered potential privateer vessels by Neri – and proposed to judge the legality of privateers' bounty according to municipal standards only (89). Finally, Neri's modified draft, a more moderate text, was 'hastily exhumed' during the

American War of Independence (96) and enacted on 1 August 1778. Taken over by several states in Italy, Neri's more indulgent 'organic codification' (100), guaranteeing neutrality 'in the equality of permissions as in the equality of prohibitions' (99) became a success. Pieralini, the original drafter, had aimed at a maximal extension of neutral trade with all belligerent parties. He had disregarded preliminary consent of 'any power that might be involved in an eventual war in the Mediterranean', but 'instead focused on when it might be the most useful to establish'. The unilateral step could only be taken ten years later.

Andrea Addobbati's contribution highlights the Tuscan jurist Lampredi's work on the capture of the *Thetis*, a Tuscan frigate seized by Spanish privateers during the American War of Independence (146–159). Lampredi is equally at the centre of Enrico Spangesi's contribution (233–246), focusing on free trade and good government as the framework for Tuscan neutrality.

Emanuele Salerno treats the reception of Pufendorf and Grotius in Tuscany, focusing on scholars Antinori (councillor of State and envoy during the War of the Spanish Succession) and Averani (professor of Civil Law at Pisa). Salerno recalls the existence of a chair of public law at Pisa, held among others by Neri and Lampredi. The author argues that the reception of Grotius, Pufendorf or Thomasius was 'linked to the strategies implemented by a small state, whose survival seemed dependent on the application of a neutrality policy capable of safeguarding commercial activity' (191). The first decennia of the eighteenth century witnessed a 'process of selecting natural law theories', dependent on issues of succession, neutrality or conceptions on civil society (192). Barbeyrac's translations of both Pufendorf and Grotius were well represented in the university's library. Antinori had to defend the right of the Florentine Senate to choose the next Grand Duke on the extinction of the Medici dynasty. As a Senator, he invoked popular sovereignty, leaning on Averani and Pufendorf, trying to avoid a situation whereby the Great Powers of Europe or the Grand Duke himself would arbitrarily appoint a new sovereign (196). However, when Francis Stephen of Lorraine was installed as new ruler in 1737 pursuant to precisely such an international agreement, the Florentines clung to Grotius's *stare pactis* doctrine to promote international agreement as the guarantee of independence and stability. Abbot Buodelmonti is the final author discussed. He argued in a 1755 synthesis of natural law doctrine and Montesquieu's *Esprit des lois*, that neutral states ought to strictly abstain from interfering in an ongoing conflict. In the Tuscan case, to the advantage of the Florentine oligarchy, representing both internal and external 'good government' (202).

Antonio Trampus treats the Italian reception of another classic: Vattel's *Le droit des gens*. Intellectuals in Milan or Venice were almost immediately

charmed (221). Even before the first Italian translation in 1781, the Tuscan edict of 1778 (see Angelini's contribution) took over his restrictive view on belligerent action in territorial waters (229). Cesare Beccaria and Gaetano Filangeri used Book I as an argument against abusive punishment (222). Trampus links the success of Vattel to that of an earlier work by the Huguenot Jean Rousset de Missy, *Les intérêts présens des puissances de l'Europe* (1733): whereas Rousset had defined the natural interests of states, Vattel provided a logical system of interaction that could make it work (228). In Naples, the emphasis of *Le droit des gens* on popular sovereignty, echoing the revolutionary troubles in France, brought it to attention of state censorship (231).

Antonella Alimento, also the volume's main editor, addresses a subject of economic theory, applied to a concrete case: Franco-British economic relations and free trade. France notoriously brought the War of the Spanish Succession (1701–1712/1713) to an end by concluding separate preliminaries of peace with Britain. Commercial issues were among the decisive elements of the agreement. Although a general pacification settlement was concluded in Utrecht (11 April 1713), specifically the commercial treaty (31 March 1713) was never ratified by Britain, failing parliamentary consent. Alimento links this to a persistent British attitude in the later eighteenth century, stretching to the 1802 Franco-British commercial agreement (concluded by Napoleon, but never applied either). In a position of weakness vis-à-vis competitors such as the United Provinces (evoking a similar case in 1674), Britain showed willingness to come to terms with France. As soon as the war was over, however, paper promises were shredded. London returned to mercantilist and domestic market-based protectionist thinking. British merchants, 'in order to defend their oligopolistic position' (116), pressed, for example, for exclusion of French wine to the benefit of English beer (126). Both countries concluded trade agreements 'in conjunction with others', especially considering the link with 'small and middle-sized powers, and also to Spain' (110). Most favoured nation clauses had indirect aims: redirecting trade flows, pushing out competitors as an intermediary.

Koen Stapelbroek sketches the history of Dutch political and economic thinking on neutrality from the seventeenth century on. Dutch historiography has sought a vibrant national narrative in resistance against absolute monarchy, emphasizing Grotius's role as a symbol of a unique discourse as 'legal-moral guide' (144). Stapelbroek's contribution rehabilitates the central role of neutrality in the Dutch Republic's identity. Far from being a structural ally of Britain, the United Provinces constructed their foreign policy on their own commercial interest. Although a uniform image of foreign policy is hard to draw, the Republic can be seen as oscillating between defensive alliance with Britain and commercial alliance with France, on the one hand, and 'a network

of defence and commercial treaties with as many states as possible' on the other (138). Being neutral allowed drawing of profit from trade with all belligerents. The Dutch could combat British dominance of international trade, but at the same time understood that 'neutral commerce itself had prolonged the duration of warfare, and in fact was not impartial but provided a great help to France' (141).

The case treated by Guillaume Calafat brings up the subject of intercultural relations and their conception in legal practice: peace and trade treaties concluded by Western powers with the Ottoman Regencies of Algiers, Tunis and Tripoli. From a position of 'irreconcilable war' with 'Turks and Saracens' (Gentili), in a situation where only France had concluded conventions with the North African provinces (175), to gradual Dutch involvement in Grotius's time (177), ever-increasing interactions brought the Irish lawyer Molloy and Pufendorf (180) to grant 'esteem' to the Barbary Regencies. Dumont's *Corps Universel Diplomatique* included conventions with Algiers, Tripoli and Tunis. Bynkershoek saw them as sovereign (182). Yet, most authors restricted their treatment to relations between European powers and the North African provinces, and eschewed their internal relations. Hübner, for instance, restricted his analysis to their 'maritime' law (185). Calafat's contribution ends by calling for more in-depth research, focusing on the international negotiations and internal debates on ratification of agreements with the Regencies (186).

Erik Schnakenbourg, the author of an impressive survey of seventeenth- and eighteenth-century neutrality[1] discusses the Danish author Martin Hübner during the Seven Years' War and his work, *De la saisie des bâtiments neutres*. Hübner's reflections on natural law started from the natural sociability of men, not from a Hobbesian permanent state of war (205). His intellectual project dismissed authority drawn from biblical examples or classical antiquity. Only reason could be the basis of the law of nations, 'the means by which to resolve the tensions resulting from the confrontation between a state's natural bias towards self-interest and the necessary equity' (206). Explicit treaties with a belligerent guaranteeing neutrality were superfluous, since Hübner read four obligatory duties (no contraband, respect for blockades, refusal of requests to provide belligerents with material ordered by their competitors, mediation between belligerents) and two rights (reprisals in case of damage inflicted by privateers, safeguard from war damage) in the 'universal law of nations'. Hübner's universalist paradigm helped to discard bilateral agreements and bring a coherent doctrine (209). His clear preference for international sociability

1 Eric Schnakenbourg, *Entre la guerre et la paix: neutralité et relations internationales, XVII^e–XVIII^e siècles*, Histoire (Rennes: PU Rennes, 2013).

and trade shifted the burden of proof for ship inspection to public authorities (210). It should come as no surprise that he advocated the 'free ship, free good' principle. Hübner dismissed national prize courts as partial, with reference to the Silesian loans case, calling for 'mixed courts', with judges from both sides (211). Of course, anyone disagreeing with the Dane's starting hypothesis of natural sociability had an easy angle to attack its consequences. Hübner's doctrine suited neutral states, but was a nuisance to a 'blue water power' such as Britain. Acting as an adviser in a bilateral Anglo-Danish negotiation in 1762, Hübner had to drop most of his ideas, concessions made to 'the *realpolitik* of diplomacy' (215).

The concluding essay by Niccolò Guasti opens up the subject again. Guasti links political economy and natural law, stating that for eighteenth-century physiocrats, economics was 'the science of constitutions, which learns not only what governments should do for their own benefit [...] but what they should do before God' (249–250), emphasizing the key role of Neapolitan thinkers in the diffusion of Enlightenment ideas across Europe and in Latin America. Maria Montorzi's text on the Austrian cameralist Joseph von Sonnenfels offers reflections on the intellectual schemes of law and political economy (101–106). Biagio Salvemini points to the ideological conception of state intervention in eighteenth century trade, emphasizing the dual nature of stimuli and protectionist measures, running against a providential liberal narrative (163): '*laissez nous faire et protégez nous beaucoup*'.

International lawyers with a historical interest will be attracted by the sometimes unexpected appearances of Pufendorf, Vattel, Barbeyrac or Hobbes across the contributions in this very interesting volume. Yet, the history of international law cannot be equalled to a mere pedigree of doctrine. Law lives in practice. In a constant dialogue between doctrine and practice, economics, history and philosophy, *War, Trade and Neutrality* shows what interdisciplinary scholarship on international law has to offer. Concrete cases allow conceptualization of state behaviour and establishment of a 'common normative understanding'[2] proper to recurrent configurations of power.[3] Moreover, the work of our Italian colleagues has been made more easily accessible through translation. This volume offers a stimulating contribution to international

2 Jutta Brunnée and Stephen J. Toope, 'International Law and Constructivism: Elements of an Interactional Theory of International Law', *Columbia Journal of Transnational Law*, XXXIX (2000), 30.

3 Fred Parkinson, 'Why and How to Study the History of Public International Law', in: Bin Cheng and E.D. Brown (eds.), *Contemporary Problems of International Law: Essays in Honour of Georg Schwarzenberger on His Eightieth Birthday* (London: Stevens & Sons, 1988), 230–241.

scholarship, analysing foreign policy from an actors' perspective, based on primary archival and printed sources. Secondly, it brings a unique view of the legal translation of international relations from the minor powers' side, sometimes at the centre of politics as an object, but more often active as laboratories on the fringes of European big power politics.

Frederik Dhondt
Research Foundation Flanders (FWO)/Legal History Institute,
Ghent University, Ghent, Belgium