

# War, the State and International Law in Seventeenth-Century Europe



Edited by  
*Olaf Asbach and  
Peter Schröder*

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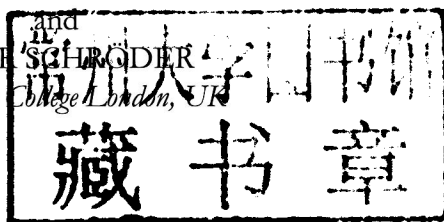
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WAR, THE STATE AND INTERNATIONAL LAW  
IN SEVENTEENTH-CENTURY EUROPE

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This volume emerged as a product of the conference *War, the State and International Law in Early Modern Europe* held at the German Historical Institute, London, in June 2008. We should therefore like to begin by thanking all the speakers, discussants and participants for their contributions. As often with such projects, not all contributions to the conference made it into the volume, for very different reasons. The range of themes and material covered at the conference is thus not fully reflected here. In particular, some of the contributions on the international and global dimensions that broached a stimulating debate beyond “Eurocentric” discussions of early modern inter-state relations could not be completed in time for publication. However, given that the early modern world system of the *Jus Publicum Europeum* was itself a result of European domination and order, we believe that the focus of the volume rightly reflects and explores this Eurocentric bias.

We are glad to acknowledge the financial assistance of the *Deutsche Forschungsgemeinschaft* (German Research Foundation) and the unfailing support well beyond financial help of the German Historical Institute, London. Its director Professor Andreas Gestrich and his staff ensured that the conference was not only an intellectually stimulating but also a very pleasant event. In preparing the chapters for publication we are grateful for the assistance of Dr. Jonathan Uhlener. Finally, we would like to thank all the contributors for working to a pressing schedule that made possible the publishing of the proceedings so shortly after the conference.

The Editors

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# PART I

## Introduction



# Chapter 1

## War, the State and International Law in Seventeenth-Century Europe<sup>1</sup>

Olaf Asbach and Peter Schröder

### From the Seventeenth to the Twenty-First Century – and Back

The seventeenth century is of particular importance for the study of the theory and practice of the modern state, of the system of international relations and of the question of war and peace. The pivotal significance of the developments of this time may be seen, for example, from the large number of studies and debates in political and cultural science, international law, philosophy, and social, economic and cultural history that have taken it as their subject.<sup>2</sup> It is striking that they often draw an open or implicit relation between developments and problems then and now. This became especially clear a few years ago in the commemoration of the 350th anniversary of the Treaties of Münster and Osnabrück, which brought the Thirty Years War to an end in 1648.<sup>3</sup> The peace settlement signalled the end of an era of state-building and confessional wars in that the following period saw the establishment of new structures and institutions that re-ordered social and international relations by means of modern state power.<sup>4</sup> Of the research and debates occasioned by this anniversary the same may be said as of those brought forth by the anniversary a few years before, celebrating the publication of Immanuel Kant's *Zum ewigen Frieden* in 1795. Both observances initiated a wave of writings, conferences and projects on

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<sup>1</sup> Translated from the German by Jonathan Uhlauer.

<sup>2</sup> This pivotal significance may also be seen in the fact that most comprehensive historical interpretations take 1648 as a caesura and thus both reflect and reproduce the prevalent "mental map". In distinctive contrast to this is Heinz Schilling's treatment of the period between 1250 and 1750 in *Die neue Zeit. Vom Christenheitseuropa zum Europa der Staaten* (Berlin, 1999).

<sup>3</sup> Cf. Heinz Duchhardt (ed.), *Der Westfälische Friede. Diplomatie – politische Zäsur – kulturelles Umfeld – Rezeptionsgeschichte* (Munich, 1998); Meinhard Schröder (ed.), *350 Jahre Westfälischer Friede. Verfassungsgeschichte, Staatskirchenrecht, Völkerrechtsgeschichte* (Berlin, 1999); Olav Moorman van Kappen, Dieter Wyduckel (eds), *Der Westfälische Frieden in rechts- und staats-theoretischer Perspektive* (Berlin, 1999); Heinz Duchhardt (ed.), *La Paix de Westphalie: de l'événement européen au lieu européen de mémoire?* (Sigmaringen, 1999); James A. Caporaso (ed.), *Continuity and Change in the Westphalian Order* (Oxford, 2000).

<sup>4</sup> Heinz Schilling, "Der Westfälische Friede und das neuzeitliche Profil Europas", in Heinz Duchhardt (ed.), *Der Westfälische Friede. Diplomatie – politische Zäsur – kulturelles Umfeld – Rezeptionsgeschichte* (München, 1998), pp. 3–32.

questions of the institutional and normative re-thinking of international law and peace that continues to have an effect today in interdisciplinary efforts and at the international level.<sup>5</sup> In spite of their often historico-political content and frequent instrumentalisation of their subjects, or precisely because of this, both these focal points of political, historical and philosophical debate are extraordinarily instructive. For after all, they are applicable and capable of being updated in a historico-political and ideological respect only because we can discuss through them fundamental problems of the present, whether in order to conceive these problems rationally or to transform them ideologically.

The forms and configurations of political, social, cultural and legal institutions and structures, especially as they developed and were consolidated in the Europe of the seventeenth century and were globalised in the second half of the eighteenth century, make up the common factual reference point of these scholarly and political debates.<sup>6</sup> Anglophone research in particular sums up these developments and transformations under the term “Westphalian order”. Here the Peace of Westphalia is a symbol for a specific set of new social and political actors, institutions and dynamics, and for the political, legal and philosophical forms in which they are to be conceived and framed. And it is precisely these structural and functional connections that have come to stand increasingly at the centre of current debates. It is this constellation, so the general tenor of articles on this debate show, that has been fundamental to modern and global relations into the second half of the twentieth century, but that in recent decades has fallen into a crisis of truly epochal character. For when basically new actors, structures and dynamics shape political, socio-economic and cultural action, all the forms, institutions and criteria used to organise, analyse and evaluate them must also be completely reconceived.

These connections among the structures and dynamics of the state, international relations and war in the seventeenth century, which are constitutive

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<sup>5</sup> On the debates over Kant, cf. Reinhard Merkel, Roland Wittmann (eds), “Zum ewigen Frieden” – Grundlagen, Aktualität und Aussichten einer Idee von Immanuel Kant (Frankfurt am Main, 1996); Matthias Lutz-Bachmann, James Bohman (eds), *Perpetual Peace. Essays on Kant's Cosmopolitan Ideal* (Cambridge, Mass., 1997); Klaus Dicke, Klaus-Michael Kodalle (eds), *Republik und Weltbürgerrecht. Kantische Anregungen zur Theorie politischer Ordnung nach dem Ende des Ost-West-Konflikts* (Weimar; Köln, Wien, 1998); Gerd Wehner (ed.), *Von der ewigen Suche nach dem Frieden. Neue und alte Bedingungen für die Friedenssicherung* (München, 2000); Eric S. Easley, *The War over Perpetual Peace: An Exploration into the History of a Foundational International Relations Text* (Houndmills, Basingstoke, 2004).

<sup>6</sup> Cf. Heinz Duchhardt, “‘Westphalian System’. Zur Problematik einer Denkfigur”, *Historische Zeitschrift* 269 (1999): 305–15; Olaf Asbach, “Die Globalisierung Europas und die Konflikte der Moderne. Dynamiken und Widersprüche in der Theorie und Praxis der internationalen Beziehungen in der frühen Neuzeit”, in Sven Externbrink (ed.), *Der Siebenjährige Krieg (1756–1763): Ein europäischer Weltkrieg im Zeitalter der Aufklärung* (Berlin, 2008).

for an understanding of the relations and developments of the future as well as the present, may be exemplified by three, frequently interwoven strands of contemporary debate and research. Focused on these strands, the seventeenth century, and the turn of the twentieth century, appear to be both the beginning and the end of a specific historical epoch.

*From the Birth of the "Leviathan" to the End of the Nation-State*

Many current debates revolve round the question of the change or decline of the state and state sovereignty brought about by the process of globalisation. From the perspective of these studies and diagnoses (sometimes in combination with a more or less clear practical-political orientation), the seventeenth century in general and the symbolic year "1648" in particular stand for the establishment of the "modern state". The crisis that followed upon the dissolution of the feudal-corporative order, overarched by imperial rule and *christianitas*, and the numerous resultant political, economic, socio-cultural and religious conflicts and wars, led to implementing the state as a new, centralised institution. The state now lay claim to an exclusive monopoly on legislation and the use of force, and justified its internal and external sovereignty with the competence to guarantee general conditions of law, freedom, peace and order; this was the foundation upon which social stability and the secure pursuit of individual and collective interests was to be made possible.<sup>7</sup>

In the eyes of many observers, this organisational form of social coherence, which has decisively determined political structures for centuries, has today fallen into a crisis or even come to an end.<sup>8</sup> Under the catchword of "globalisation",

<sup>7</sup> Cf., for example, Hendrik Spruyt, *The Sovereign State and its Competitors. An Analysis of Systems Change* (Princeton, 1994), p. 27; Heinz Schilling, "Formung und Gestalt des internationalen Systems in der werdenden Neuzeit – Phasen und bewegende Kräfte", in Peter Krüger (ed.), *Kontinuität und Wandel in der Staatenordnung der Neuzeit. Beiträge zur Geschichte des internationalen Systems* (Marburg, 1991), p. 37.

<sup>8</sup> Representative of this view, but with clearly differing reasons and diagnoses, are Joseph A. Camilleri, Jim Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (Aldershot, 1994); John Hofman, *Beyond the State* (Cambridge, 1995); Martin Albrow, *The Global Age: State and Society Beyond Modernity* (Cambridge, 1996); Peter Evans, "The Eclipse of the State? Reflections on Stateness in an Era of Globalization", in *World Politics* 50 (1997), pp. 62–87; Martin L. van Creveld, *The Rise and Decline of the State* (Cambridge, 1999); Stephan Leibfried, Michael Zürn (eds), *Transformations of the State?* (Cambridge, 2005); David J. Eaton (ed.), *The End of Sovereignty? – A Transatlantic Perspective* (Münster, 2006). A comparison of relevant contributions to this debate has been undertaken by Stefan Lange, "Diagnosen der Entstaatlichung. Eine Ortsbestimmung der aktuellen politischen Zeitdiagnostik", *Leviathan* 30 (2002), pp. 454–81.

<sup>9</sup> On the boom in the use of the term "globalisation" since the 1990s, cf. Andreas Busch, "Die Entwicklung der Debatte. Intellektuelle Vorläufer und ausgewählte Themen",



they have discussed all those developments and processes that seem seriously to undermine the organisational, regulatory and directive institutions of the national state, from the globalisation of production and finance capital, the development of new sub and transnational actors and institutions, to ecological problems that are no longer amenable to the regulatory power of nation-states.

*From the Westphalian Order to the New World (Dis)Order*

From the mid-seventeenth century on, the establishment of the sovereign state generated a new system of international relations.<sup>10</sup> Its central figures are states that confront one another with the claim to sovereignty and no longer acknowledge an overarching legal and normative instance such as emperor and pope. This radically transforms, and in a specific sense rationalises and secularises, the theory and the practice of the international system: both become the object of a purely rational calculus of interests that seeks to secure the policies and wealth, position and goals of each individual state by the use of political, military, economic, financial and other sources of power. On the one hand, as a correlate of reasons of state in foreign policy so to speak, the concepts and political strategies of a *balance of power* and of a politics of interests gain the ascendancy; on the other hand, a new kind of *international law* emerges that is primarily understood as the *law of states*. Together, these tendencies come to form the fundament of political and international thought and action in the new system, first in Europe and then across the globe.<sup>11</sup> From this results the secular character of the present crisis of the international system.

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in Stefan A. Schirm (ed.), *Globalisierung. Forschungsstand und Perspektiven* (Baden-Baden, 2006), pp. 35–53.

<sup>10</sup> Benno Teschke summarily sketches the relevant assumptions of what he understands to be “a constituting founding myth within International Relations” in *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (London, 2003; German transl. Münster, 2007), pp. 1–4. For a critical discussion of various variants of this position, cf. *ibid.*, chap. 1, and Matthias Zimmer, *Moderne, Staat und Internationale Politik* (Wiesbaden, 2008), pp. 37–53.

<sup>11</sup> Cf. Roland Axtmann, “The State of the State: The Model of the Modern Nation State and its Contemporary Transformation”, in *International Political Science Review* 25 (2004), pp. 264–81. Of the vast literature on the theory and practice of political and legal operations in the modern state system, cf. for example Heinz Duchhardt, *Gleichgewicht der Kräfte, Convenance, Europäisches Konzert. Friedenskongresse und Friedensschlüsse vom Zeitalter Ludwigs XIV. bis zum Wiener Kongreß* (Darmstadt, 1976); Wilhelm G. Grewe, *The Epochs of International Law* (Berlin and New York, 2000); Arno Strohmeyer, *Theorie der Interaktion. Das europäische Gleichgewicht der Kräfte in der frühen Neuzeit* (Wien, Köln and Weimar, 1994); Michael Sheehan, *The Balance of Power. History and Theory* (London and New York, 1996); Lucien Bély (ed.), *L'Europe des traités de Westphalie. Esprit de la*