

# Just and Unjust Neutrality: J.H.G. von Justi's Defence of Prussian Maritime Neutrality (1740–1763)

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## Introduction<sup>1</sup>

The War of the Austrian Succession (1740–1748)<sup>2</sup> and the Seven Years' War (1756–1763)<sup>3</sup> were the primary contexts in which maritime neutrality became a matter of fierce debate across Europe. Within the debates in these years, no problem of neutrality was of greater interest than the issue whether neutral goods on enemy ships and enemy goods on neutral ships were “free”.<sup>4</sup> Scholarly discourse on this matter gained importance in the early history of the rights and duties tradition, on the one hand, and in the framework of the theory of the law of nations, on the other.<sup>5</sup> The War of the Austrian Succession and the Seven Years' War also formed the primary context of the most important interventions in German thought as well. An apogee in this debate was precipitated by a political controversy between Prussia and England. Prussia, that had been able to exit the war after the treaty of Dresden (1745), considered itself neutral and perfectly justified to trade with France, the arch-enemy of England. In response, however, British privateers seized several Prussian vessels laden with belligerent goods in 1747. The Prussian side in the

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2 For an introduction to the War of Austrian Succession see Reed Browning, *The War of the Austrian Succession* (New York: St. Martin's Press, 1993).

3 For a new and comprehensive introduction to Seven Years' War in Europe see Franz A. J. Szabo, *The Seven Years War in Europe: 1756–1763* (Harlow: Pearson Longman, 2008).

4 Michael Schweitzer, “Neutralität”, *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, eds. O. Brunner, W. Conze and R. Kosselleck (Stuttgart: Ernst Klett, 1978), vol. 4, pp. 317–37. See especially pp. 325–6.

5 Heinz Duchhardt, *Balance of Power und Pentarchie: Internationale Beziehungen 1700–1785* (Paderborn: F. Schöningh, 1997), p. 74.

conflict claimed that England hereby violated neutral rights, whereas the British held it to be their right to confiscate enemy property carried on neutral vessels. This controversy resulted in a long lasting debate about the rights and duties of neutrals. Christian Schmid explained in his *Abhandlung von der Neutralität und Contreband-Waare* (1761), that both sides sought to enlist the support of those whom were considered the most experienced and learned men to provide unshakable foundations for their respective causes.<sup>6</sup>

One of the scholars who defended Prussia's right to trade was a young lawyer named Johann Heinrich Gottlob von Justi (1717–1771) who is today known as one of the founders of modern political and economic thought in Germany.<sup>7</sup> In 1747 Justi's fame was still in the making. He had made himself known mainly by winning a Berlin Academy prize with his critical essay on the monads.<sup>8</sup> He had also founded his first journal *Ergetzungen der vernünftigen Seele aus der Sittenlehre und der*

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6 Christian Gottlieb Schmid, *Abhandlung von der Neutralität und Contreband-Waare* (Leipzig, 1761). Republished in *Sammlung auserlesener juristische Abhandlungen das deutsche Staatsrecht betreffend, aus verschiedenen Sprachen ins deutsche übersetzt*, ed. Johann Gottfried Senff (Leipzig: Müller, 1768), pp. 3–30. See page 12: “Niemals aber ist über diese Frage mehr gestritten worden, als da in dem vorigen Jahrhundert so öftere Kriege zur See entstunden, auch in dem jetzigen, besonders noch vor dem Aachener Frieden. Es ist dieserhalb endlich sogar, welches mir am meisten gefällt, bis zur öffentlichen Deductionen gekommen, zwischen den Königen von England und von Preussen, welcher letztere seine Handlung mit denen Franzosen, als damaligen Feinden von England, nicht aufheben wollte. Es wurden deswegen von beyden Seiten Gelehrte ausgesucht, die man in diesem Stück für die erfahrensten hielt, welche sehen sollten, ob diese Frage durch gewisse und unzweifelhafte Gründe könne ausgemacht werden.”

7 Von Justi had a very eventful and colourful life that had a tragic end. He was a man of both theory and practice. Justi started his career as a soldier among the Saxon troops before studying legal and cameral sciences in Wittenberg from 1742 to 1744. In 1745 he began to publish his first journal and from here onwards, he kept editing at least one journal at a time basically for the rest of his life. Two years later Justi won an essay competition with his text *Nichtigkeit und Ungrund der Monaden*, in which he criticized Leibniz' and Christian Wolff's theory of monads. In this very same year Justi was appointed to the service of the widowed Duchess of Saxe-Eisenach 1747. Anna Sophie Charlotte of Saxe-Eisenach (1706–1751) was of Prussian origin, which could explain Justi's involvement on the debate on Prussian maritime neutrality. In 1750, Justi went to Vienna, where he was called upon to be chair of *eloquenta Germanica* at the Theresianum. His inaugural lecture was on the connection between the flowering of the sciences and the means to make a state happy. This lecture, which was also published, contained a detailed plan for teaching cameral sciences at the Theresianum. From 1752 Justi had the opportunity to teach them in practice as professor of *Praxis im Cameral- Commercial- und Bergwesen*. In the next year, Justi moved to Leipzig and from there in 1755 to Göttingen, where he became a *Polizeidirektor* and the first lecturer to teach cameral sciences at the University of Göttingen. Soon after, in 1757 Justi left Göttingen and went to work in the service of the Danish Court. After the short period in Denmark Justi maintained himself as a free writer until 1765. This was the time when he wrote most actively. He gained a pension from Prussia for his pro-Prussian and pro-English pamphlets. In 1765 he was appointed to an inspectorate of mines, glass-, and steelworks (*Berghauptmann*) in Prussia. Only three years later he was accused of having misused the state's money. Justi died, nearly blind and imprisoned in the fortress of Küstrin in 1771. Best introductions to Justi are Ulrich Adam, *The Political Economy of J.H.G. Justi* (Oxford: Peter Lang, 2006) and Ferdinand Frensdorff, *Über das Leben und die Schriften des Nationalökonom J. H. G. von Justi* (Göttingen, 1903).

8 J. H. G. von Justi, “Von den Monaden”, *Dissertation qui a remporté le prix proposé par l'Academie Royale des Sciences et Belles Lettres sur le systeme des monades avec les pieces qui ont concouru* (Berlin, 1748). For the context of Justi's essay on monads see Thomas Ahnert, “Newtonianism in early Enlightenment Germany, c. 1720 to 1750: Metaphysics and the critique of dogmatic philosophy”, *Studies in History and Philosophy of Science* 35 (2004), pp. 471–91 and R.S. Calinger, “The Newtonian-Wolffian Controversy (1740–1759)”, *Journal of the History of Ideas* 30 (1969), pp. 319–33.

*Gelehrsamkeit überhaupt (1745–1749)*<sup>9</sup>, which was at first published anonymously. In an issue dated 16 March 1748 Justi decided to make himself known. He postponed all other topics and instead decided to dedicate the entire issue to a matter that he felt was of utmost importance. In his essay *Erörterung der Frage: Ob kriegende Mächte der Handlung und Schiffahrt eines neutralen Volks nach ihres Feindes Hafen, in Ansehung der sogenannten Contrebandwaaren, einige Hinderniß und Schaden zu verursachen befugt sind?*<sup>10</sup> Justi reflected on when and under which conditions confiscation of contraband from neutral ships heading to enemy harbours could be considered just.

The issue in which Justi published his essay was dedicated to Samuel von Cocceji (1679–1755), the great Prussian jurist and theorist on whose ideas Frederick the Great based his reform plans.<sup>11</sup> Justi praised Cocceji for his reforms that he greatly admired. The Prussian states could enjoy the improvement of the legal reforms and the Prussian example would therefore also encourage other states to follow its path. Likewise, in matters concerning Prussian neutrality, von Cocceji remained the main guide to furthering the Prussian interest. These views of Justi's give us a hint about his intentions in writing his early essay on maritime neutrality. He was seeking the favour of the Prussian court by defining neutral rights very broadly. In this way we can say that in writing his essay Justi was providing the backbone for Prussia's foreign policy in the War of the Austrian Succession. Justi, who was seeking a position in the Prussian administration, tried to catch the attention of Frederick the Great and his ministers. This became a lifelong dream for Justi, yet once it was fulfilled the results were disastrous.

As mentioned above, in 1748 Justi was still building his reputation. During the Seven Years' War his star had already risen. Therefore, it is no wonder that the second time when maritime neutrality became a matter of great dispute, in the context of the Seven Years' War, Justi's opinion was much valued. Frederick II hired Justi as a pro-Prussian pamphleteer. Justi's perspective on war and trade – and conquest and commerce – became famous through his war pamphlets, the most

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9 J. H. G. von Justi, *Ergetzungen der vernünftigen Seele aus der Sittenlehre und der Gelehrsamkeit überhaupt* (Leipzig: Breitkopf, 1745–1749).

10 J. H. G. von Justi, "Erörterung der Frage: Ob kriegende Mächte der Handlung und Schiffahrt eines neutralen Volks nach ihres Feindes Hafen, in Ansehung der sogenannten Contrebandwaaren, einige Hinderniß und Schaden zu verursachen befugt sind?", *Ergetzungen der vernünftigen Seele aus der Sittenlehre und der Gelehrsamkeit überhaupt*, vol. 5 (1748), pp. 475–510.

11 On Cocceji's life see Roderich von Stintzing, "Cocceji, Samuel v.", *Allgemeine Deutsche Biographie*, vol. 4 (1876), pp. 373–76. For Samuel Cocceji's jurisprudence see Knud Haakonssen, *Natural law and moral philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996), pp. 135–45; and as Haakonssen states, there is a good account of the Coccejian reforms in H. C. Johnson, *Frederick the Great and His Officials* (New Haven: Yale University Press, 1975), pp. 106–133.

central of which are *Chimäre des Gleichgewichts von Europa* (1758)<sup>12</sup> and *Chimäre des Gleichgewichts von Handlung and Schiffahrt* (1759)<sup>13</sup>. In these pamphlets Justi rejected the balance of power and balance of commerce doctrines as guidelines for European order. It was not through these “chimerical” doctrines that Europe could be stabilized, he argued, but only by fostering economic development across its various states.<sup>14</sup> Neutrality appeared to Justi as an essential part of his solution to this problem of instability. He rephrased this problem in the form of the question of how to minimize the disruptive character of war on the economy of the state and on commerce in general. Confronting this problem required finding the right compromise between the rights of belligerents and the rights of neutrals. In what follows I will argue that the foundation for this compromise was to a great extent developed in Justi’s early essay, but that it was significantly reconceptualised in his war pamphlets published during the Seven Years’ War. The redefinition crucially hinges on the introduction of the concept of “taking the place of the enemy”, which I will explore below.

The interest that German political actors and theorists displayed in the issue of neutrality must be seen in the light of their wish to see the rise of German principalities from their economic and political backwardness.<sup>15</sup> Within this framework neutrality served not so much as a means to avoid the horrors and destruction of war, but more productively as a facilitator of commercial development within and across states. Justi realised all too well, as one recent study put it, that the economic limits to politics were ‘set by the imperative need of modern nations to succeed in international trade’.<sup>16</sup> Neutrality was an instrument to make the political and economic requirements for aligning state interests and reform the interstate system compatible with one another. With regard to the latter, Justi proposed the foundation of larger commercial monarchies that were competitive politically, commercially and militarily. To achieve a sustainable competition among states, he outlined a comprehensive political theory for the reform of Europe’s monarchies. In his view, civil liberty and moderate government were the basis of commercial

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12 J. H. G. von Justi, *Die Chimäre des Gleichgewichts von Europa: eine Abhandlung, worinnen die Richtigkeit und Ungerechtigkeit dieses zeitherigen Lehrgebäudes der Staatskunst deutlich vor Augen gelegt, und dabey allenthalben neue und rührende Betrachtungen über die Ursachen der Kriege und dem wesentlichen Grunde, worauf die Macht eines Staats ankommt, beygebracht werden* (Altona: Iversen, 1758).

13 J. H. G. von Justi, *Die Chimäre des Gleichgewichts der Handlung und Schiffahrt, oder, Ungrund und Richtigkeit einiger neuerlich geäußerten Meynungen von denen Maassregeln der freyen Mächte gegen die zu befürchtende Herrschaft und Obermacht zur See: wobey zugleich Neue und wichtige Betrachtungen über die Handlung und Schiffahrt der Völker, und über den höchsten Punkt der daraus entstehenden Macht und Glückseligkeit beygebracht werden* (Altona: David Iversen, 1759).

14 Istvan Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge MA: Harvard University Press, 2005), p. 35.

15 On Justi and German economy see Adam, *Political Economy*, pp. 55–9.

16 Adam, *Political Economy*, p. 59, with reference to Hont, *Jealousy of Trade*, p. 185.

excellence, which had become the new aim of every state.<sup>17</sup> Neutrality, on the one hand a regulatory principle in international trade and the distribution of wealth among states on the other hand galvanized Prussia's aspirations to maintain its status as a new great power, which it had become after the victories of the two Silesian wars.<sup>18</sup>

It is important to understand that Justi drew a line between just and unjust neutrality, where the latter grew purely out of greed. The differences between Danish and Dutch neutrality served for Justi as examples between just and abusive neutrality. Prussia would do wise in following the footpath of the Danes. This would enable Prussia to catch up with France and England in a twofold manner. Prussia would increase its share of the trade while England and France whose enmity was likely to spill into wars several times also in the future, would weaken each other. In this way, Prussia would become more powerful, even more so because Justi believed that power was always relative. In this view Justi was building to a large extent on the political thought of Montesquieu.<sup>19</sup>

### **Prussian Neutrality and Rights and Duties in the War of the Austrian Succession**

Systematic thinking on belligerent rights began to develop during the wars of the eighteenth century. These rights were above all defined in their relation to neutrals. It has been argued that what may be called to rival 'schools' of thought emerged: the necessity or "conflict-of rights" school and the "code-of-conduct" school. The representatives of the conflict-of-rights school maintained that the rights of belligerents and neutrals were necessarily and rightfully in opposition to each other. The representatives of the other, code-of-conduct, school maintained that a belligerent's rights always found their correspondence in a neutral's duty. And if a neutral has not committed anything wrong, no right can be exercised. The principle of necessity served often the cause of the belligerent whereas the code-of-conduct school was in favour of the rights of the neutrals.<sup>20</sup>

Justi recognised the potential conflict between the rights of belligerents and the neutral right to trade. Drawing on Grotius, Justi stated in his *Erörterungen* that the

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<sup>17</sup> Adam, *Political Economy*, pp. 233–238.

<sup>18</sup> On the concept of a great power see Hamish M. Scott, *The Emergence of the Eastern Powers, 1756–1775* (Cambridge: Cambridge University Press, 2001). On Prussia's attempts to secure the newly gained power position on the second half of Frederick's regime see Hamish M. Scott, "Aping the Great Powers: Frederick the Great and the defence of Prussia's international position, 1763–86", *German History* 12 (1994), pp. 286–307.

<sup>19</sup> Grete Klingenstein, "'Jede Macht ist relativ': Montesquieu und die Habsburger Monarchie", *Festschrift Othmar Pickl zum 60. Geburtstag*, ed Herwig Ebner (Graz: Leykam, 1987), pp. 307–25.

<sup>20</sup> Stephen C. Neff, "The Prerogatives of Violence: In search of the Conceptual Foundations of Belligerents' Rights", *German Yearbook of International Law* 38 (1995), pp. 41–72, 42–6, 53–7; Stephen C. Neff, *The Rights and Duties of Neutrals: A General History* (Manchester: Manchester University Press, 2000), pp. 44–60. Stephen C. Neff, *War and the law of nations: A General History* (Cambridge: Cambridge University Press, 2006), pp. 151–5.

sea was no one's property. Therefore, it was clear that it was open for neutrals to be used for their trading activities in times of war as well as in peace.<sup>21</sup> Moreover, everyone had the same right to trade or not to trade. With Grotius Justus also argued that a nation was not obliged to trade with anyone against its own will. He wondered whether Grotius had here bent his own principles on this matter once Portugal had rejected the Dutch as trading partners. Since every nation was the master of its own trade there was no obligation to trade. On this matter Justus was building on Pufendorf, Thomasius and Huber in order to argue that a nation was entitled to decide with whom it wanted to trade and also to forbid trade in certain goods from and to its harbours, if it wished to do so. Every nation had the right to prevent import of contraband to its harbours. More difficult was the case with the contraband of war. Could a belligerent forbid a neutral from trading in certain goods?<sup>22</sup>

Justus stressed that belligerents had rights too. He emphasised that every belligerent, just as any nation, had the profound natural right of self-preservation: "The natural law allows us to prevent everything that can cause us injury".<sup>23</sup> It is in accordance with the right of self-preservation to oppose our unhappiness and decay – which is the aim of our enemy – in all possible means. In other words, the law of self-preservation gave the belligerent the right to prevent harmful things happening to him. Could neutral trade with the enemy not be considered harmful?<sup>24</sup>

However, the law of nature also ascribed the duty to the belligerent not to injure innocent third parties with whom he was at peace: "Even if the natural law allows us to prevent injuries and detriments; it also commands, that we may not injure a third party, with whom we live in peace and friendship."<sup>25</sup> In short, although natural law, in the name of self-preservation, allows us to prevent harmful things happening to us, it on the other hand commands that we are not entitled to injure any third party which is not involved in the clash itself.<sup>26</sup> That is to say that belligerent may not prevent third parties in promoting their happiness, for example, by hindering or complicating neutral's commercial activities. This would be a violation of the neutral right to trade. Furthermore, there was another argument against the belligerent right to interrupt neutral trade. There is no way a belligerent could force a nation to

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21 von Justi, "Erörterung der Frage", p. 476.

22 von Justi, "Erörterung der Frage", p. 475–477.

23 von Justi, "Erörterung der Frage", p. 482: "Das natürliche Recht erlaubt uns aber, alles dasjenige zu verhindern, was uns Schaden verursachen kann."

24 von Justi, "Erörterung der Frage", p. 482.

25 von Justi, "Erörterung der Frage", p. 482: "Wenn uns das natürliche Recht erlaubt, unsern Schaden zu verhindern: so befiehlt es auch, daß wir einem Dritten mit dem wir in Friede und Freundschaft leben, keinen Schaden zufügen sollen."

26 von Justi, "Erörterung der Frage", p. 482. On Justus's natural law theory see Ere Nokkala, "Passion as the foundation of natural law in the German enlightenment: Johann Jacob Schmauss and J.H.G. von Justi", *European Review of History: Revue européenne d'histoire* 17 (2010), pp. 113–23.

trade according to its wishes since how could it give commands for a nation living in the free state of nature. No state had such authority over another.<sup>27</sup>

However, Justi was willing to look at the situation from the view point of the belligerent: was it really the case that the belligerent was bound to watch its enemy grow stronger and stronger with the help of a neutral nation?<sup>28</sup> Justi did not directly refer to the conflict between England and Prussia of the time. However, as we will later see, this was clearly on his mind. Could a nation (England) not seize goods from neutral vessels (from Prussia), if they were shipping goods to the enemy harbour (in France)? Justi argued that the question was not so easily resolved and not even the greatest authorities in natural law provided us with guidance. Not even Pufendorf had touched upon the issue and Grotius had written very little about it. Therefore, Justi believed, his essay would be most useful for his readers.<sup>29</sup> He emphasised the urgency of his topic: the empirical reality was full of examples of the seizure of enemy ships since one heard all the time news of neutral ships confiscated because of carrying contraband of war. It was to be decided, whether this was just.<sup>30</sup>

## The Principle of Impartiality

Justi's starting principle was that neutrals should be allowed to trade as long as they behaved in a genuinely neutral fashion. Therefore, the definition of just neutrality needed to be precise. Justi understood neutrality in terms of impartiality, of not giving "preference to either of the two belligerents."<sup>31</sup> A neutral state's impartial status was directly compromised if the neutral joined the position of the enemy (*an der Feindes Stelle*) by, for example, lending provisions to a besieged city. The neutral also became an enemy by providing fortresses under siege with gunpowder or other war supplies (*Kriegsbedürfnisse*).

Justi's position presented a rather mainstream German view, to be found also in *Zedler's Universal-Lexicon* (1740), where neutrality is defined in terms of impartiality, as an equal attitude towards both belligerents – a third party that lived in peace with both belligerents, and gave no preference to any one of them.<sup>32</sup> This

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27 von Justi, "Erörterung der Frage", p. 484–5, p. 489.

28 von Justi, "Erörterung der Frage", p. 491: "Allein, soll denn eine kriegende Macht so ganz gelassen wahrnehmen, daß ihr Feind verstärkt wird, ist sie denn schuldig, mit kaltem Blute zuzusehen, daß ihrem Feinde die Mittel in die Hand gegeben werden, womit er ihr Unglück verursachen will?"

29 von Justi, "Erörterung der Frage", p. 477–8.

30 von Justi, "Erörterung der Frage", p. 478.

31 von Justi, "Erörterung der Frage", p. 493: "Das Wesen der Neutralität besteht darinnen, daß sich ein Volk, das neutral seyn will, in Ansehung zweyer in Krieg begriffenen Mächte gegen einen Theil, wie gegen den andern bezeugt, und keinem Theil einzigen Vorzug zugestehet."

32 Johann Heinrich Zedler, "Neutralität", *Zedler's Großes Vollständiges Universal-Lexicon aller Wissenschaften und Künste*, vol. 24 (1740), pp. 382–388. See p. 382: 'Neutralität [...] heißt eine solche Aufführung, da zwischen zwey kriegenden Partheyen der dritte sich also verhält, daß er mit beyden im Friede lebet, und keinem vor dem andern beyfällt, noch einige Gunst oder Vortheil einräumet.'

position entailed a departure from Grotius's classical perspective in which neutrals were obliged not to harm the just side and not to help in any way the unjust side in the conflict.<sup>33</sup> The entry in Zedler's *Lexicon* instead presented this argument as contradicting the very principle of impartiality. As Schmid put it later, in 1761, echoing Bynkershoek's famous dictum: "for those, who are neutral, the war, in which it does not want to participate, must not look neither just nor unjust".<sup>34</sup>

Impartial behaviour could take the form of equal refusal or equal co-operation. Johann Paul von Vockel, an officer of the Saxon army took a stand on this issue in an essay compiled on the battlefield. In his *Rechtliches Bedencken über die Natur, Eigenschaften und Würckungen der Neutralität, auch unterschiedene daraus fließende besondere Fragen* Vockel first argued that a neutral should treat belligerent parties in an equal manner, without giving preference to neither one of them.<sup>35</sup> Subsequently, instead of dividing neutrality into a general and a specific form, as was usual at the time, he argued that neutral behaviour was a twofold affair. Neutrality could either be permissive (*die permissive oder erlaubende Neutralität*) or prohibitive (*die prohibitive oder verbiethende Neutralität*).<sup>36</sup> Examples of objects of permission or prohibition he gave were the marching of troops and recruits through neutral's soil, the export of provisions and ammunitions, the acceptance and conveyance of deserters, the passage of prisoners of war and transport of captured goods. Within a state of permissive neutrality some or all of the above actions were equally permitted to both belligerents, whereas in a state of prohibitive neutrality they were equally forbidden to all parties in the conflict. The difference between the two positions in reality often was not a matter of legal 'choice' but a

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33 Zedler, "Neutralität", p. 383: "Denn diese erfordert, daß ein neutraler Staat sich in die Streitigkeiten der kriegenden gar nicht mende: welches letztere aber geschehen, und eine offenbare Partheyigkeit andeuten würde, wenn er die Sache der einen Parthey als eine gerechte, und die Sache der andern als eine ungerechte, dergestalt äusserlich tractiren wolte, daß er nur dasjenige unterliesse, was der einen Parthey, deren Sache er vor ungerecht hält; und nicht auch, was der andern, deren Sache er vor gerecht hält, zum Vorschub gereichen könnte; und wenn er die Bewegungen nur der einen Parthey, deren Sache er vor gerecht hält, nicht hindert, wohl aber die Bewegungen der andern Parthey, deren Sache er vor ungerecht hält. Vielmehr muß ein neutraler Staat, da er sich in die Sache der kriegenden gar nicht mengen will, auch die Gerechtigkeit oder Ungerechtigkeit derselben, zum wenigsten äusserlich, dahin gestellet gesetlet seyn lassen, und also nicht, wie Grotius meynet, in seinem äusserlichen Verfahren einen Unterscheid machen, ob die Gerechtigkeit der Sache der einen Parthey seiner Meynung nach gewiß, oder zweifelhaftig sey. For Justi's corresponding view see von Justi, "Erörterung der Frage", p. 484. In dem natürlichen Stande der Freyheit kann sich niemand einer Erkenntniß anmaßen, ob in Streitigkeit dieser oder der andre Theil Recht hat. Alle andere, die in diesen Streitigkeiten nicht begriffen sind, können sie also als gleichgültig ansehen, und als Dinge, sie ihnen nichts angehen." For a more general context see also Tara Helfman, "Neutrality, the Law of Nations, and the Natural Law Tradition: A Study of the Seven Years' war", *The Yale Journal of International Law* 30 (2005), pp. 549–86, 561.

34 Schmid, *Abhandlung*, p. 20: "Denenjenigen, die neutral sind, muß der Krieg, darein sie sich nicht mischen wollen, von beyden Seiten weder gerecht oder ungerecht scheinen."

35 Johann Paul von Vockel, *Rechtliches Bedencken über die Natur, Eigenschaften und Würckungen der Neutralität, auch unterschiedene daraus fließende besondere Fragen*. Frankfurt; Leipzig, 1746), p. 7.

36 von Vockel, *Rechtliches Bedencken*, p. 7: "Bey der permissiven Neutralität sind diese Objecta alle, oder einige dererselben in dem Lande dasjenigen, der solche auf sothane Weise declariret, einem Theil, wie dem andern erlaubt; bey der prohibitiven hingegen einem wie dem andern verboten."



question of military power of the neutral. Whereas a state of permissive neutrality required no power to be upheld, prohibitive neutrality required the support of military force. The neutral had to be strong enough to enforce its neutral rights and was entitled to raise arms and defend its neutrality against a belligerent that violated its rights.<sup>37</sup> In these passages Vockel was anticipating the idea of armed neutrality and even used the concept *die neutrale Puissance* to designate a counterforce to the powers of war.<sup>38</sup>

Prussia, on this count, was without any considerable sea power and had to rely on legal argument as part of its defence of its neutral trade. According to Justi it was clear that a belligerent was entitled to seize goods from neutral ships that were clearly going to be used against it. However, if the same goods had been sold also in peace time trade, the matter of their confiscation was considerably more complex. The belligerent would have to prove that the neutral was not engaged in trade in this good in peacetime.<sup>39</sup> A compromise between the English position (defending the right to confiscate goods) and the Prussian (the right to trade with belligerents) was ultimately reached through invocation of the concept of ‘goods of war’.

## The Concept of Goods of War

The concept of the ‘goods of war’ (*Kriegsbedürfnisse*) was used in order to discriminate between goods that could and that could not be confiscated justly by a warring party. Grotius had argued that such goods of war could be identified through dividing all goods up into three different classes corresponding to the degree to which they supported belligerents’ war efforts: firstly, there were goods that were of use *only* in war; secondly, goods that were of use *both* in war and peace; and thirdly, goods that were of *no* use in war. Several German authors who wrote on neutrality contested the very use of the concept of contraband, and especially of Grotius’s distinctions. As long as neutrals behaved impartially towards both belligerents (*gleiches Verfahren gegen beyde Partheyen*) they remained neutral. The kind of goods that were traded was thus not decisive.<sup>40</sup> Zedler’s *Universal Lexicon* emphasised that even arms and munitions could be sold without injuring the rights of a neutral, as long as they were sold impartially, i.e. to both belligerents. Soldiers too could be sold to belligerents. Zedler as well the anonymous author of

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37 von Vockel, *Rechtliches Bedencken*, pp. 5–8. For similar views see [anonymous], *Abhandlung von der Neutralität und Hülfleistung in Kriegeszeiten* (Gotha, 1758).

38 von Vockel, *Rechtliches Bedencken*, pp. 10–11.

39 von Justi, “Erörterung der Frage”, p. 491: “Denn wenn nach dem Natur- und Völkerrechte mit dem Kriegsbedürfnissen gehandelt werden kann, wenn es erlaubt ist, in Friedenszeiten mit dergleichen Waaren in ein Land zu handeln; so ist es ja mehr als sonnenklar, daß eben der Krieg, welcher entstehet, wovor aber neutrale Völker nicht das geringste können, diesen Handel verhindert, und folglich diesen neutralen Völkern Schaden verursacht.”

40 Zedler, “Neutralität”, p. 384: “[...] indem der Waffen- und Munition-Handel auch ohne alle Partheylichkeit und feindselige Absicht getrieben werden kan, und also der Neutralität gleichfalls nicht eben nothwendig zuwider ist.”

the *Abhandlung von der Neutralität und Hilfsleistung in Kriegeszeiten* (1758) used the example of Switzerland to point out that no one questioned Swiss neutrality, while the Swiss went so far as to provide mercenary troops to France. This was not considered a breach of neutrality since the Swiss offered troops to both sides in the armed conflict. However, experience and the customs of nations demonstrated that no belligerent allowed such trade to take place that allowed its enemy to prolong the war effort against him.<sup>41</sup>

The most radical argument against the concept of contraband of war was provided by Schmid who claimed that lifeless creatures, unlike reasonable creatures, are not in themselves responsible for unjust actions. Guns live neither justly nor unjustly.<sup>42</sup> In his opinion the whole concept of contraband was only a tool applied to weak neutrals not capable of supporting their claims by force. Schmid argued that only countries whose strengths lay in scholarly argument and trade were interested in such concepts. Schmid pointed out that the Spaniards, who possessed a considerable sea power, ridiculed such declarations, because the argument they offered – approximately forty good battleships ready to go to war – carried greater force.<sup>43</sup>

Justi's defence of broad neutral rights on the other hand was theoretically founded on his concept of the 'goods of war' (*Kriegsbedürfnisse*). Unlike Grotius, Justi divided the goods supplied during war into two categories. First, there were goods that could be used only in war. Second there were goods that were useful both in war and peace.<sup>44</sup> To the former belonged gunpowder, ammunitions, cannons and arms including armament of warships. To the latter category belonged grain, iron, and ship tools such as masts, sails and ropes. Justi's point was not to show that neutrals were prohibited trade with goods that fell in the first category, such as guns. In order to prohibit trade with these goods evidence was required that showed that the neutral was also excluded from trade in these goods in peacetime.<sup>45</sup> Neutrals should not have to pay any price for exercising their perfect right to trade even with the first type of goods.<sup>46</sup> A neutral nation carrying goods of war to enemy harbours could not be held guilty of an injustice as it was only exercising its right to trade without injuring anyone. Here Justi was following in the footsteps of Samuel

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41 [anonymous], *Abhandlung*, pp. 154–5.

42 Schmid, *Abhandlung*, pp. 19: "Ich weiß nicht, ob an und vor sich denen leblosen Geschöpfen eben so wohl ungerechte Handlungen können beygemessen werden, als denen vernünftigen Creaturen. Die Canonen können für sich selbst weder gerecht noch ungerecht leben, daß Schießpulver wird keinen an seiner Ehre beleidigen, Holz, Stricke, Thauwerk sind nicht fähig, jemandem ein Recht, das er durch einen Vertrag erhalten hat, zu nehmen, Spieße können nimmermehr Lügen begehen, und dergl."

43 Schmid, *Abhandlung*, p. 20.

44 von Justi, "Erörterung der Frage", p. 492.

45 von Justi, "Erörterung der Frage", p. 491.

46 von Justi, "Erörterung der Frage", p. 484: "Es ist also gewiß, daß auch Kriegsbedürfnisse Waaren sind, womit Handlung getrieben werden kann."

Cocceji, who had argued that since the neutral had voluntarily decided to stay out of war, parties in the conflict should neither hinder the neutral's movement, nor prevent it from exercising its rights, even if it was the case that the power of one belligerent increased more than the power of the other as a consequence of neutral trade in steel, guns and other war supplies.<sup>47</sup>

The division between two types of goods of war that Justi put forward did not serve to prevent neutrals from engaging in trade, but rather to define the rights of a belligerent to confiscate goods that could potentially endanger its self-preservation. A belligerent had a right to capture first class goods of war, while the neutral had no duty to refrain from carrying it. To appreciate the principle of impartiality and neutrals' rights Justi argued that belligerents were entitled to capture these goods, but only against compensation. A belligerent was entitled to confiscate armaments on the condition that neutral parties did not suffer from the war. On this principle, the capturer had to pay the price of the captured goods. The burden of evidence to determine the amount of the compensation lay on the side of the neutral party which had to show the ship's books.<sup>48</sup>

In Justi's model of maritime neutrality, trade should continue without disruption. This conclusion, unsurprisingly, was very favourable to Prussia. The neutral right to trade was respected simultaneously with the belligerent right to seize whatever could be used to injure his enemy. It followed from the demand of impartiality that the intercepted goods by virtue of their being intercepted were bought by the other party, since the neutral was not to suffer from the war. In this was the just price was paid for the goods, while the ship itself could not be confiscated. Unlike Bynkershoek, Justi did not think that neutrals ought to run these risks.<sup>49</sup> Neutral merchants were entitled to receive their profits one way or another.

Justi argued that the ongoing war showed many examples of confiscation without payment. In these cases neutrals were treated as *de facto* enemies. In his essay Justi was directly praising French policy in the War of Austrian Succession. According to Justi the French had paid for goods confiscated from neutral vessels.<sup>50</sup> In taking this stance Justi explicitly criticised British policy towards neutrals and above all the confiscation of Prussian ships. England treated Prussian subjects and thereby Prussia as the enemy.

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47 Samuel von Cocceji, *Samuelis L. B. de Cocceji Novum systema iustitiae naturalis et romanae: in quo praemisso principio generali omnia iustitiae naturalis praecepta complectente I. Iura Dei in homines demonstrantur II. Iura hominum inter se iuxta tria iuris Romani obiecta exponuntur simulque universum ius Romanum in artem redigitur* (Halle, 1748), § 789.

48 von Justi, "Erörterung der Frage", p. 495: "Die Kauffartheschiffe einer neutralen Nation, sind also schuldig, den Kriegeschiffen und Armateurs einer kriegenden Macht ihre Schriften vorzuweisen. Wenn nun diese daraus ersehen, daß unter der Ladung des Schiffes Kriegsbedürfnisse von der ersten Art befindlich sind, und daß sie in feindlich Häfen und Länder geführet werden sollen; so sind sie befugt, solche an sich zu nehmen. Allein auf keine andre Art als gegen baare Bezahlung: und zwar noch eben dem Preise, als man beweisen kann, daß sie in den feindlichen Ländern bezahlet werden. Die neutralen Nationen sind nicht schuldig, dem geringsten Schaden zu leiden."

49 Helfman, "Neutrality", p. 562.

50 von Justi, "Erörterung der Frage", pp. 507–8.

## The Seven Years' War and the Future of Prussia in the Balance of Power

Christian Schmid, who commented on the context of Justi's *Erörterungen*, asserted that the case between England and Prussia was never solved and England thus continuously confiscated Prussian ships and other neutrals until the end of the War of Austrian Succession.<sup>51</sup> Frederick II demanded restitution and formed a committee to prepare a memorandum on the matter. To strengthen his demands he refused the payment of the final institution of the Silesian loan. This Silesian loan, which amounted to two hundred and fifty thousands pounds, had been taken out by Emperor Charles VI from British merchants in 1734. The payment of the loan was to be made from the revenues of Silesia. When Silesia was conquered by Prussia, Frederick II bound himself to the payment of the loan. However, once English privateers had started to confiscate the property of his subjects and take them to prize courts, Frederick refused further payments.<sup>52</sup>

At the head of Frederick's committee was none other than the famous lawyer Samuel Cocceji. Under his direction the committee prepared a memorandum called *Exposition des Motifs* (1752)<sup>53</sup>, written in French and accompanied by an English translation. England responded also in a formal manner in a report enclosed in a letter of the Duke of Newcastle to a Prussian minister. This report is known as the *The Duke of Newcastle's Letter*.<sup>54</sup> According to the Prussian memorandum, the sea was free. The search of neutral ships on the free sea was against the law of nations. There was no cause for legitimately searching a free ship if the ship's books were shown as proof that the vessel carried no contraband goods. Neither was it in accordance with the law of nations if captured ships were taken to the English prize courts. The English perspective on the matter was that though the sea was indeed free, a belligerent had a permanent right to capture enemy goods. Furthermore, the historical record showed there had been a long practice of taking seized ships to the capturer's court. The case was ultimately settled when England agreed to pay a restitution of twenty thousand pounds, considerably less than originally stipulated. In exchange Prussia paid the remaining forty thousand pounds of the debt and

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51 Schmid, *Abhandlung*, p. 12.

52 Ernest Satow, *The Silesian Loan and Fredrick the Great* (Oxford: The Clarendon Press, 1915).

53 *Exposition of the motives, founded upon the universally received laws of nations which have determined the King (of Prussia) upon the repeated instances of his subjects trading by sea, to lay an attachment upon the capital funds which His Majesty had promised to reimburse to the subjects, of Great-Britain, in virtue of the peace-treaties of Breslau and Dresden = Exposition des motifs, fondés sur le droit des gens universellement reçu, qui ont déterminé le roi, sur les influences réitérées de ses sujets commerçants par mer, à mettre arrêt sur les capitaux, que Sa Majesté avoit promis, de rembourser aux sujets de la Grande-Bretagne, en vertu des traités de Breslau & de Dresde* (London, 1752).

54 *The Duke of Newcastle's letter, by His Majesty's order, to Monsieur Michell, the King of Prussia's secretary of the embassy, in answer to the memorial, and other papers, deliver'd, by Monsieur Michell, to the Duke of Newcastle, on the 23d of November, and 13th of December last. Published by authority* (London, 1753).

interests. Later, both sides celebrated their memoranda as scholarly victories that had convinced the opponent.<sup>55</sup> The settlement was conditioned by the so-called Diplomatic Revolution, as part of which the Convention of Westminster (1756), a defence alliance between England and Prussia, was written. In this reversal of alliances Austria allied with its old archenemy France, whilst England and Prussia joined forces.

The simultaneous rivalries between France and England, and between Prussia and Austria, spilled over into war in 1756 with Prussia's attack on Saxony. The role of neutrals became subject to fierce debate.<sup>56</sup> Of special interest were the United Provinces and Denmark, smaller states that received invitations to ally themselves to both sides in the conflict.<sup>57</sup> These invitations went along with arguments about the balance of power: the navies of Denmark and the United Provinces could influence the balance of the war effort. Several French writers questioned England's actions on the sea and especially England's behaviour towards the neutrals. Perhaps most famously, Maubert de Gouvest (1721–1767) argued that England was about to destroy the balance of power which was the rule of peace and war in Europe as a result of its absolute command over the seas and maritime commerce. The trade, the intrinsic mechanisms of which controlled and maintained the balance of power was falling in the hands of England.<sup>58</sup> England's seizure of neutral Dutch ships and the Navigation Acts were indications of vicious aspirations to create a universal monarchy. In the same vein Marquis Paul de L'Hopital, French ambassador in Saint Petersburg had called England the despot of the seas and had argued that to prevent the universal monarchy of England there was a need to halt its maritime ravages. Otherwise, not only the freedom of seas, but also the freedom of Europe would be lost.

In his role as Prussian and Hanoverian propagandist, Justi attacked a host of enemies. In order to justify Prussia's attack on Saxony Justi wrote a book called *Leben und Character des Königl. Pohnischen und Churfürstl. Sächs. Premier-Ministre Grafens von Brühl* in which he presented Count Brühl's regime as an example of ministerial despotism. Justi argued that Prussia had saved Saxony from

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55 Adolf Trendelenburg, "Friedrich des Grossen Verdienst um das Völkerrecht im Seekrieg", *Monatsberichte der preußischen Akademie der Wissenschaften* (1866), pp. 29–52.

56 Seminal for this context is 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* 4 (2008), pp. 63–89. See also John Shovlin, "Selling American Empire on the Eve of the Seven Years War: The French Propaganda Campaign of 1755–1756", *Past and Present* 206 (2010), pp. 121–49.

57 Matt Schumann and Karl Schweizer, *The Seven Years War: A Transatlantic History* (London: Routledge, 2008), pp. 176, 185.

58 Matthew S. Anderson, "Eighteenth-Century Theories of the Balance of Power," *Studies in Diplomatic History*, eds. Ragnhild Hatton and Matthew S. Anderson (London: Longman, 1970), pp. 183–98. See pages 192–3.

the rule of this tyrant.<sup>59</sup> Directly after Sweden joined the alliance against Prussia, Justi launched a frontal attack on Sweden by condemning its decision to join the war. The Swedish constitution, which allowed the tyranny of one party, had opened the doors to such an unwise decision.<sup>60</sup> Hence, it did not come as a surprise that Justi also attacked the French pamphleteers whose critiques of English policy on neutral trade clearly were thinly concealed attempts to lure Denmark and the United Provinces to stand by their rights which suited the French interest.<sup>61</sup> In his *Chimäre des Gleichgewichts der Handlung und Schiffahrt* Justi dismissed the arguments presented in Maubert's anonymously published pamphlets *Citoyen Amsterdam* and *Politique Danois*.<sup>62</sup> Maubert de Gouvest presented the standard French position on the balance of power in his book *Politique Danois*. According to Maubert, following others who had used the same phrase, the European nations formed a republic (la république générale). This republic, he argued, was grounded on the fact that all nations were bound to the balance of power and supported it. Maubert claimed that English domination of this republic threatened the equal right of all nations to the riches of the world and therefore an equal right to own the world's trade. As the only possible manner to counter British hegemony, Maubert pleaded for an armed coalition of Continental powers.<sup>63</sup>

Justi claimed that Maubert's malevolence was without comparison. In his view, not even Machiavelli was as vicious as Maubert.<sup>64</sup> In *Die Chimäre des Gleichgewichts der Handlung und Schiffahrt* Justi emphasised that the French author had misunderstood the nature of trade and the concept of just neutrality. In defense of England Justi emphasised that the Navigation Acts were a just measure, since every nation was the master of its own trade. In the words of Istvan Hont in his recent study on 'Jealousy of Trade': "Instead of trying to subject trade to the realist logic of the balance of power, Justi argued, one ought to respect the right of nations to disengage from certain individual branches of trade."<sup>65</sup> His take on the Navigation Acts exemplified Justi's general logic.

Justi believed in self-balancing mechanisms of international free trade. The commerce of a state was based on natural circumstances, such as the fertility of

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59 J. H. G. von Justi, *Leben und Character des Königl. Pohlnischen und Churfürstl. Sächs.. Premier-Ministre Grafens von Brühl*, 3 vols. (Frankfurt, 1760–1764). See also Adam, *Political Economy*, pp. 157–63.

60 Ere Nokkala, "Debatten mellan J.H.G. von Justi och H.L. von Heß om frihetstidens författning", *Historisk Tidskrift för Finland* 94 (2009), pp. 20–55.

61 For comparison see Alimento's chapter in this issue.

62 Jean-Henri Maubert de Gouvest, *Le politique danois, ou, L'ambition des Anglais démasquée par leurs pirateries: ouvrage dans lequel on recherche laquelle des deux nations de la France ou de l'Angleterre, a dérangé par ses hostilités l'harmonie de l'Europe, & où l'on prouve aux Souverains de quelle importance il est pour eux d'abattre l'orgueil de ce peuple* (Copenhague, 1756).

63 Maubert de Gouvest, *Le politique danois*, pp. 18–20; Stapelbroek, "Universal Society", pp. 65–6.

64 von Justi, *Die Chimäre des Gleichgewichts der Handlung*, p. 9.

65 Hont, *Jealousy of Trade*, p. 35.

the land and the geographical location. But above all it was based on the qualities of the inhabitants. Foreign trade was based on the high quality and low price of the products that a country was producing. This combination again was impossible to achieve without skilfulness and industry of the inhabitants. The equality of commerce could be reached only by promoting equality in skilfulness and industry, which would discourage the development. Besides, it was not possible that England could gain commercial monopoly. At some point the price of labour and commodities in England would rise to such a level that poorer nations would be able to destroy their previously solid market position. The amount of money in circulation and the concomitant price rises further stimulated by foreign trade surpluses would finally erode the price competitiveness of manufactured export goods. For this reason Justi believed that the world economy could not be dominated by one nation.<sup>66</sup> Justi's idea of the self-destructive character of competition is similar to Montesquieu's ideas presented in his essay on universal monarchy *Réflexions sur la Monarchie Universel en Europe* (1734). In this essay Montesquieu claimed that universal monarchy was morally impossible. No one ever had been in position to actually achieve universal monarchy.<sup>67</sup> One of the explaining factors was the intertwined nature of political and commercial power. Following Montesquieu, Justi argued that a world monopoly of trade was impossible because of the self-cancelling character of international competitiveness.

### **The Principle of Impartiality Reconsidered – Dutch Neutrality as Abusive Neutrality**

After dispensing with the argument of French pamphleteers for the necessity of an anti-British league, Justi turned to their portrayal of the alleged British mistreatment of neutral ships. Here Justi was on thin ice. In 1748 he had explicitly questioned the confiscation of Prussian ships by British privateers and praised France. However, in 1758, the setting differed considerably from the one of the War of the Austrian Succession. Following the *renversement des alliances* Prussia had become an ally of England and enemy of France. Yet, rather than disregard his earlier essay on maritime neutral trade, Justi republished his essay in his *Historische und Juristische Schriften* (1760) with a number of additional footnotes that qualified his previous position.<sup>68</sup> The alterations had to do with a redefinition of what he understood as “taking the position of the enemy”. In his original *Erörterungen* Justi had argued that taking the position of the enemy was the most crucial violation of impartiality. In his new footnotes he argued that neutral nations may not become

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66 Hont, *Jelousy of Trade*, p. 36; Adam, *Political Economy*, p. 89.

67 John Robertson, “Universal Monarchy and the Liberties of Europe: David Hume’s Critique of an English Whig Doctrine,” *Political Discourse in Early Modern Britain*, eds. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993), pp. 349–73.

68 J. H. G. von Justi, *Historische und Juristische Schriften*, vol. 1 (Frankfurt, 1760), pp. 140–70.

mere carriers of enemy's trade. If this took place, the neutral had turned into an enemy. This redefinition of taking the role of the enemy was an argument against Dutch neutrality, which according to Justi, far from neutral, was motivated by subsuming peace to greed – in the case of the Dutch, profit motivated shipping of French goods from its Caribbean colonies that prolonged the Seven Years' War.<sup>69</sup>

The last Chapter of Justi's *Die Chimäre des Gleichgewichts der Handlung und Schifffahrt* was dedicated to a defence of England's hostile policy towards Dutch trade from the French colonies and gave a detailed exposition of how the Dutch adopted and justified the position of the French.<sup>70</sup> Justi argued that there were two rival views on how to understand neutrality. First, one could claim that neutrals ought to show the same impartial behaviour towards both belligerents. According to Justi this definition was lacking because something that helps one belligerent is not necessarily beneficial to the other and therefore never required from the neutral. For instance, England would not gain in the same manner as France if Dutch traders would take over its colonial trade. The second definition of neutrality stated that the neutral shall not strengthen either of the belligerents. This, for Justi, was too strict a position that would affect to an unnecessary degree the rights of neutrals by seriously limiting their commercial freedom. In fact, it would put a halt to all trade, since any kind of trade with a belligerent strengthened him in a direct manner (*unmittelbarer weise*). Justi chose to leave the definition of general neutrality rather open. However, he asserted that maritime neutrality as a specific but important part of neutrality was more easily defined. The duties of neutrality are respected as long as a neutral state does not take the role of the belligerent or give the enemy shelter from persecutions (*Verfolgungen*). In practice, this meant that neutrals could not provide ammunition or weapons to belligerents. A neutral was allowed to sell these goods, but not actually to deliver them. In a similar way, and more important and contested, a neutral was not allowed to take over the enemy's own trade and continue it as a carrier (*eigene Schifffahrt des Feindes übernimmt und fortsetzet*). This problem was at stake in the clash between Britain and Holland. The Dutch offered France a way out (*Ausweg*) and enabled the French to save their overseas trade. In contrast with the previous French colonial trade monopoly, neutral, especially Dutch ships, were given the right to carry goods to and from French colonies during the Seven Years' War. According to Justi, this was not ordinary trade in the way described in his essay on neutral trade. Dutch ships were

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69 von Justi, *Historische und Juristische*, p. 152. Here Justi added a footnote to point out that being a mere carrier of enemy goods out of greed violated the principles of neutrality and that it was self-evident that goods of war loaded on belligerents bill could be confiscated. See footnote k: "Dieses versteht sich mit der Einschränkung, wenn ein neutrales Volk schon vor dem Kriege einen dergleichen Handel zu treiben gewohnt gewesen ist. Allein wenn der eine kriegführende Theil zu Friedenszeiten keiner Nation die Handlung in seine Colonie gestattet, und hernach aus Noth, weil er seine Schifffahrt nicht schützen kann, die Häfen seiner Colonie öffnet, wie in dem jetzigen Krieg Frankreich thut, so ist das ein ganzer anderer Fall. Die neutralen Nationen, die in einen solchen neuen Handel, und vorher ungewöhnlichen Handel anfangen. Sie treten an die Stelle des Feindes. [...] Sie handeln aus Gewinnsucht."

70 von Justi, *Die Chimäre des Gleichgewichts der Handlung*, pp. 75–86.



not engaged in their own trade *with* France, but were carrying goods *for* France – which they had been barred from previously. The Dutch were thus in Justi's terms taking the position of the enemy. Justi's earlier essay on neutral trade did not mention this particular way in which a neutral took the position of the enemy, but Justi included it in the footnotes of the reprint and referred to the behaviour of the Dutchmen.<sup>71</sup> He claimed that the Dutch had become not only enemies, but true aggressors. Consequently, the claim that the British mistreated neutrals was false, since the Dutch were not in fact neutral. This reasoning completely proved Maubert wrong and demonstrated the extent of his malevolence.<sup>72</sup> Further proof of this line of reasoning was the fact that England did not interrupt Dutch trade from elsewhere, but only from the French colonies. Thus Justi's position can be seen easily as a part of the vast amount of contemporary literature on the distinction between neutral trade *with* the enemy and trade *for* the enemy. Justi was in favour of what we know as the Rule of 1756, which stipulated that neutrals refrained from trade in wartime that was closed to them in time of peace.<sup>73</sup>

### Danish Neutrality as a Model for Prussia

In 1757 Count Johann Hartwig Ernst Bernstorff (1712–1772) invited Justi to Copenhagen. Justi may have had some influence in Denmark.<sup>74</sup> However, Denmark and Bernstorff seem to have had an even greater influence on Justi. His new and powerful patron conducted Denmark's foreign policy between 1751 and 1770 and was a devoted supporter of commercial neutrality. In the historiography of the nineteenth and early twentieth century, Bernstorff's political vision was often idealised. Scholars referred to the moral superiority of the legal framework of Bernstorff's foreign policy. More recent scholarship has started to emphasise the importance of the economic framework. Neutrality was economically highly advantageous for Danish shipping and commerce. Therefore, neutrality was not as much a struggle for survival as a competition for prosperity.<sup>75</sup> Justi became a fond admirer of Bernstorff's foreign policy. While rejecting Dutch claims to neutral rights Justi praised Danish neutrality as wise foreign policy. Justi did not go into great theoretical detail in his discussions of the principles of Danish neutrality.

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71 von Justi, *Historische und Juristische*, p. 152, footnote k and p. 156, footnote l.

72 von Justi, *Die Chimäre des Gleichgewichts der Handlung*, p. 21.

73 Helfman, "Neutrality", p. 550. See also Richard Pares, *Colonial blockade and neutral rights 1739–1763* (Philadelphia: Porcupine Press, 1975).

74 Erik S. Reinert, "Johann Heinrich Gottlob von Justi: The Life and Times of an Economic Adventurer", *The Beginnings of Political Economy: Johann Heinrich Gottlob von Justi*, ed. Jürgen Georg Backhaus (Berlin: Springer, 2009), pp. 33–74. On Justi's influence in Denmark-Norway see pages 44–8.

75 Carsten Holbraad, *Danish Neutrality: A Study in the Foreign Policy of a Small State* (Oxford: Clarendon Press, 1991), pp. 3–19; Ole Feldbæk, "Eighteenth-Century Danish Neutrality: Its Diplomacy, Economics and Law", *Scandinavian Journal of History* 8 (1983), pp. 3–21; Adam, *Political Economy*, pp. 68–9, p. 91.

It was rather the mechanism of how Danish neutrality contributed to economic development that he admired. Justi was himself in Denmark in 1758 and according to some sources he acted as a customs director (*Kolonial-Inspektor*) there.<sup>76</sup> In any case, he had first-hand information about the success of Danish neutrality, both in keeping Denmark out of war and in triggering an increase in foreign trade.

According to Justi, even the most successful wars were disastrous enterprises. Warfare caused depopulation, currency disorders and tax rises and suffocated foreign commerce and the development of manufacturing industry.<sup>77</sup> Whereas all belligerents were certain that they could improve their circumstances through war, Justi stressed that if states invested in commerce and manufacturing, these would produce far wiser and greater conquests.<sup>78</sup> From his Danish experience Justi had recognised the opportunities neutrality could offer which led to his wish that Germany and especially Prussia would follow the Danish example. Justi believed markets could not be conquered – but they could be lost or obtained during wartime: while two powers were fighting commercial wars it was comparatively easy to increase one's share by staying out of the conflict. This issue was more broadly discussed in Germany. The anonymous author of the *Hülffleistungen* stated that neutrality did not automatically increase the relative power of a neutral state while belligerents weakened each other.<sup>79</sup> Justi disagreed and argued that while France and England were fighting, the real winner was neutral Denmark, which presented an exemplary case of the practice of this wise *Staatskunst* in the Seven Years' War.<sup>80</sup> Therefore, Justi's future vision for Germany included a policy of what he called 'fixed neutrality' (*vestgesetzte Neutralität*), which would function as a tool in leaving behind the wars that had been so harmful for Germany's economy during the past two hundred years.<sup>81</sup>

In order to understand Justi's proposal better one needs to return to *Die Chimäre des Gleichgewichts der Handlung und Schiffahrt*. There Justi criticised the author of the *Politique Danois* of 1756 for not at all understanding the Danish interest and predicament. Maubert, whom Justi believed to be the writer, had claimed that Denmark ought to join the war effort against England. According to Justi, if Denmark changed its peaceful attitude it would be more advantageous to join England and

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76 Reinert, "Johann Heinrich Gottlob von Justi", p. 45.

77 J. H. G. von Justi, *Der Grundriß einer Guten Regierung* (Frankfurt: Garbe, 1759), p. 427: "Der Krieg stürzet zugleich allemal die auswärtigen Commerciens darnieder; man weiß aber, daß die innländischen Manufacturen und Gewerbe ihren Flor hauptsächlich auf die auswärtigen Commerciens gründen; und der Verfall des gesammten Nahrungsstandes ist also eine unausbleibliche Folge auch der glücklichsten Kriege."

78 J. H. G. von Justi, *Wohlgemeynte Vorschläge eines die jetzigen unglücklichen Zeiten beseufzenden Menschenfreundes auf was vor Bedingungen die jetzo Krieg befangenen Mächte zu einem dauerhaften und ihrem allerseitigen Interesse gemässen Frieden gelangen könnten zur Aufmunterung ganz Deutschlands* (Friedensnah, 1759), pp. 5–6.

79 [anonymous], *Abhandlung*, p. 53.

80 Adam, *Political Economy*, p. 69.

81 von Justi, *Wohlgemeynte Vorschläge*, pp. 44–.

Prussia. However, Justi pointed out that the wisest strategy for Denmark was to remain neutral and concentrate on the development of its economy and trade. Instead of trying to conquer back its old provinces from Sweden (Scania and Bleking) Denmark concentrated on domestic economic development. It was clear that Justi's point equally regarded Austria, which should refrain from attempting to conquer back Silesia from Prussia and focus on cultivating its own agriculture and commerce. To give his arguments more force Justi referred to his experiences in Denmark and mentioned, for example, that the sale of sugar had increased by 800,000 thaler. According to Justi, it was a general principle of prolonged commercial wars that both parties in the conflict lost parts of their share in global trade to non-belligerent parties. Justi elaborated on the issue by using a historical example. Denmark and Sweden had started a commercial war against the Hanseatic League that was fundamentally a just war. As a result of this war the Hanseatic League's trade decreased, but Denmark and Sweden did not gain. The real winner of the war had been Holland. The moral of the story was that when two powerful nations entered into a long-lasting commercial war the best policy was neutrality.<sup>82</sup> Justi believed that the dominant eighteenth-century rivalry between France and England would spill over into wars time and again in the near future. The best policy for Germany was to 'fix' its neutrality and to build up its foreign trade, thus catching up with France and England while these two powers weakened each other. Questioning the logic of Justi's position from a diplomatic perspective, his Austrian commentator asked what kind of English ally Prussia was if it abandoned Britain despite all the subsidies the British had paid.<sup>83</sup> Justi rhetorically took this point as further proof of the fact that he had not written on command or inspired by political motives, but only out of patriotic love for Germany (*aus patriotischen Liebe vor Teutschland*) – that he had confronted the issues of neutrality as an independent thinker and that precisely this had enabled him to properly address the wider problems of peace and trade.<sup>84</sup>

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82 von Justi, *Die Chimäre des Gleichgewichts der Handlung*, pp. 56–60.

83 [anonymous], *Das entlarvte Preußische Friedensproject welches unter dem Titel: Wohlgemeynte Vorschläge, auf was vor Bedingungen die itzo im Kriege befangenen Mächte zu einem dauerhaften und ihrem allseitigen Interesse gemäßen Frieden gelangen könnten [et]c. heraus gekommen, und sehet, was es ist!* (S.l. [Alethopolis], 1760), pp. 19–20.

84 J. H. G. von Justi, *Der enthüllte Oesterreichische Schriftsteller, oder Anmerkungen über die so betitulte Schrift: Das entlarvte Preußische Friedensproject, welches unter dem Titel; Wohlgemeynte Vorschläge, auf was vor Bedingungen, die itzo im Kriege befangenen Mächte zu einem dauerhaften [...] Frieden gelangen könnten* (Vienna: Trattner und Jungnicol, [ca. 1760].), p. 46, see footnote iii.