

Law on the Diplomatic Stage: the 1725 Ripperda Treaty

I. “Balance of Power” between politics and law in history

The “Balance of Power”, or the decentralised maintenance of stability between sovereign power centres, is one of the timeless metaphors for the theory of international relations. Indifferent whether we trace it back to Aristotle, to Polybius, to Islamic philosophy¹ or to the Italian *quattrocento*², it still occupies the mind today. “*Detached from ideology, universally applicable, independent from short-term state considerations, it stresses the essential, timeless and inescapable, in international affairs: power and power relationships*”, to paraphrase Ernst Haas’ words³. It is linked to the realist (if we think of Henry Kissinger’s *Diplomacy*⁴ or Raymond Aron’s *Paix et guerre entre les nations*⁵), as well as to the interdependency-paradigm. Or, if we reframe it with Martti Koskenniemi’s brilliant work: as well to apologists, as to utopists⁶. For the jurist, it explains how law can be derived from an anarchical society⁷ inevitably characterised by the multiplicity of power centres⁸, “*involved in such intimacy of interrelationship as to make reciprocal impact feasible*”⁹.

The application of the concept to the eighteenth century, the “crossroads of international law”, where medieval ideas of *causa justa* are abandoned, is a classic¹⁰. To quote

¹ Derived from the *al-Mizān* (balance) at the final ordeal. Livet, Georges: L’équilibre européen de la fin du XVe siècle à la fin du XVIIIe siècle. PUF. Paris, 1976 p. 12.

² Wright, Martin: Theory and practice of the Balance of Power, 1486-1914: selected European writings. Dent. London, 1975.

³ Haas, Ernst: The Balance of Power: Prescription, Concept, or Propaganda. In: World Politics V (July 1953), No. 3, p. 442-477.

⁴ Kissinger, Henry: Diplomacy. Simon and Schuster. New York, 1994 p. 245. Kissinger built his eminent scientific career on his study of the 19th century-balance elaborated by Metternich and Castlereagh in Vienna (cf. Id.: A World Restored. Houghton Mifflin. Boston, 1973).

⁵ Aron, Raymond: Paix et guerre entre les nations. Calmann-Lévy. Paris, 2004 [1962]. See also, as examples of realist balance-of-power thinking applied to law: Hoffman, Stanley, International Systems and International Law. In: World Politics XIV (1961), No. 1, p. 205-237; Morgenthau, Hans Jürgen: Macht und Frieden. Grundlegung einer Theorie der internationalen Politik. Bertelsmann Verlag. Gütersloh, 1963 p. 45.

⁶ Koskenniemi, Martti: From apology to utopia: the structure of international legal argument. Lakimiesliiton Kustannus - Finnish Lawyers' Publishing Company. Helsinki, 1989 p. 6.

⁷ Bull, Hedley : The anarchical society: a study of order in world politics. MacMillan. London, 1977.

⁸ “*La théorie des relations internationales part de la pluralité des centres autonomes de décision, donc du risque de guerre*” (Aron, Raymond: Paix et guerres p. 28). We would hardly dare to suggest Mr. Aron was an interdependentist, but this phrase neatly frames the common starting point to both branches of theory, something shared by Hobbes and Kant as well.

⁹ Sheehan, Martin: The Balance of power: history and theory. Routledge. London, 1996 p. 53.

¹⁰ Mattei, Jean-Mathieu: Histoire du droit de la guerre, 1700-1819: introduction à l’histoire du droit international: avec une biographie des principaux auteurs de la doctrine internationaliste de l’Antiquité à nos jours. Presses Universitaires d’Aix-Marseille. Aix-en-Provence, 2006 introduction (s.p.); Kaeber, Ernst: Die Idee des europäischen Gleichgewichts in der publizistischen Literatur vom 16. bis zur Mitte des 18. Jahrhunderts. Gerstenberg. Hildesheim, 1971 [1907].

the British historian Herbert Butterfield: “the eighteenth century looked back to the Roman Empire as a thing that must never be allowed to happen again. They realized [...] that there are only two alternatives: either a distribution of power to produce equilibrium or surrender to a single universal empire”. Through its multiple representations in pamphlet literature, philosophy, and even music¹¹, it conquered public opinion as well¹².

However, “the Balance” has a *histoire noire* of derision. An eminent example of this is Heinz Duchhardt’s (Univ. Mainz) criticism, expressed in the *Journal of the history of International Law* in 2000. According to this most renowned scholar of 18th Century international relations, there was no such thing as an explicit conceptual “balance” in the treaty sources. Not even in the Peace of Utrecht, where it only figured in the British-Spanish, and the Spanish-Savoyan agreements¹³. Duchhardt cited the Peace of Vienna between Emperor Charles VI (1685-1740) and King Philip V of Spain (1683-1746) as a rare example of a post-1713-treaty literally retaking the formula. Conclusion ? “[...] the political metaphor of the 18th century did not at all succeed in being raised to the canon of the standard formulas of international law¹⁴”, where amongst others the works of Evan Luard¹⁵ and Wilhelm Grewe¹⁶ classified it.

¹¹ Hume, David : The Balance of Power in Europe. Amsterdam, 1758; for the controversy between Kahle (La Balance de l’Europe considérée comme la règle de la paix et de la guerre. Berlin, 1744) and Justi (Die Chimäre des Gleichgewichts von Europa. Altona, 1758), see: Strohmeyer, Arno: Theorie der Interaktion. Das europäische Gleichgewicht der Kräfte in der frühen Neuzeit. Böhlau. Wien, 1994, pp. 40-56. 7-18. As a musical example, we can cite George Frederick Händel’s 1713 celebration of the Peace of Utrecht: “Ode for the Birthday of Queen Anne” (9: “United Nations Shall Combine”), Chrysander, F.W. (Hrsg.): G.F. Händel’s Werke. Deutsche Händelgesellschaft. Leipzig, 1887, Plate H.W. 46a. Most recent recording: Berlin Academy for Ancient Music/Andreas Scholl, 2009 (Harmonia Mundi 9020401).

Butterfield, Herbert : The Balance of Power. In: Butterfield and Wight (eds.): Diplomatic investigations: essays in theory of international politics Allen & Unwin. London, 1996 p. 142.

¹³ Treaty between Queen Anne of Great Britain and King Philip V of Spain, Utrecht, 13 July 1713, Published in: Dumont, Jean: Corps universel diplomatique du droit des gens. Pieter Husson & Charles Levier. Den Haag, 1731, nr. CLXIV, pp. 393-400; Treaty between King Philip V of Spain and Duke Victor Amadeus of Savoy, Utrecht, 13 July 1713, Parry, Clyde (ed.): The Consolidated Treaty Series. Oceana Publishing. Dobbs Ferry 1961-1986, v. XXVIII, p. 274, art. III (“CTS”); quoted in Duchhardt, Heinz: The Missing Balance, In: Journal of the History of International Law II (2000), pp. 69-70, footnotes 16 and 17. See also, in the same sense (the balance is a vague and ill-observed principle): Anderson, Mark S., Eighteenth-Century Theories of the Balance of Power, in: Studies in diplomatic history, essays in memory of D.B. Horn, edited by Hatton, Ranghild and Anderson, Mark S. Longman. London, 1970 pp. 183-198.

¹⁴ Ibid., p. 72. See also the following quote from Charles Dupuis: “[L’équilibre] permet, dans la pratique, aux grands États de s’enrichir pourvu que chacun le fasse dans des proportions qui ne portent pas trop ombrage aux autres; il ne garantit que pour eux et entre eux le maintien d’un certain rapport de forces. Aux faibles, il ne laisse que l’alternative d’être épargnés, si leur maintien importe à tous, ou d’être dévorés, si leur absorption peut apaiser les discordes des forts. Ses complaisances pour les appétits robustes, sa souplesse ouverte à toutes les combinaisons, les aires de décence qu’il donne aux opérations les plus scabreuses, telles sont les conditions de son succès. Elles permettront aux adeptes de la philosophie d’applaudir avec une demi-inconscience aux pires scandales de la spoliation politique” (Dupuis, Charles: Le principe d’équilibre et le concert européen, de la paix de Westphalie à l’acte d’Algésiras. Perrin. Paris, 1909 p. 36).

¹⁵ Luard, Evan: The balance of power: the system of international relations, 1648-1815. MacMillan. London, 1992 p. 1.

¹⁶ Grewe, Wilhelm W. : Epochen der Völkerrechtsgeschichte. Nomos Verlag. Baden-Baden, 1984 p. 328.

Why should I thus claim precious academic time discussing a mere political or even metaphysical metaphor ? Randall Lesaffer (Univ. Tilburg) demonstrated five years later, in an article in the same journal, that Duchhardt's analysis was hasty and incomplete, pointing to at least five other treaties in the period concerned¹⁷. Peace Treaties, which Duchhardt examined, only tell us a part of the story, since treaties of *alliance* -bi- or multilateral- also reflect the underlying conceptions of the diplomatic actors. Moreover, to correctly appreciate the wordings of these formal documents, coming at the end of a negotiating process, the legal historian must venture into the archives of so-called "political" correspondence, "[afin d'] *échapper aux systèmes préfabriqués d'explication historique, de retrouver les peurs et les joies d'un temps, de déchiffrer les hésitations et certitudes d'une civilisation, en restituant le tremblement de l'histoire*"¹⁸.

At the occasion of this Forum of Young Legal Historians -putting "*the law on stage*"- I considered it appropriate to have a closer look at the diplomatic practice surrounding this so called "Ripperda"-treaty. During archival research, conducted in the State Papers Foreign, conserved at the National Archives in Kew¹⁹, and in the Additional Manuscripts Collection of the British Library, I came across the reports of British diplomats from Paris, Vienna and Madrid. They shed a new light on the topic. I aim to demonstrate two theses:

(1) Balance of Power is a legal principle, born out of political circumstance. It gets its directing power from memorial construction. The conceptual treaty history of the balance dated back to long before the Treaty of Utrecht²⁰, and gained its force out of memorial accumulation. *Tranquillité, libertés de l'Europe, balance...* were synonyms for the rebuttal of universal monarchy. A club of great powers mended the system to fit the largest general denominator of interests. This is what Heinz Duchhardt called a *droit de convenance* in the beginning of his academic career²¹, but not much research has been done regarding it²². In the long run, it might be interesting to integrate this *behavioural* concept with French

¹⁷ Lesaffer, Randall : Paix et guerre dans les grands traités du dix-huitième siècle. In: Journal of the History of International Law, VII (2005), p. 38, footnote 44: Treaty of the Quadruple Alliance - Vienna Treaty of Alliance between George II of Great Britain and Emperor Charles VI, 16 March 1731, CTS XXXIII, p. 318 – Treaty of Turin between Louis XV of France and Charles Emmanuel of Savoy-Sardinia, 26 September 1733, CTS, XXXIV, p. 97 - Bourbon Family Pact between Louis XV and Philip V of Spain, Escorial, November 1733, CTS, XXXIV, p. 125 – Vienna Peace Treaty between Louis XV, Charles VI and the Holy Roman Empire, 18 November 1738, CTS XXXV, p. 205.

¹⁸ Bély, Lucien : La société des Princes. PUF. Paris, 1999 p. 29.

¹⁹ Concerned with this theme: N.A., SP Foreign, Paris, 78-171 (Congress of Cambrai, March-December 1722), 172 (April-December 1723), 173 (January-April 1724), 174 (May-July 1724), 175 (July-December 1724), 176 (January-May 1725); 80-54 (Vienna, January-May 1725), 86 (May-October 1725); 94-93 (Madrid, May-November 1725); B.L., Add. Ms., 48981 (Townshend Papers).

²⁰ Lesaffer, Randall: Paix et guerre p. 39.

²¹ Duchhardt, Heinz : Gleichgewicht der Kräfte, Convenance, europäisches Konzert. Friedenskongresse u. Friedensschlüsse vom Zeitalter Ludwigs XIV. bis zum Wiener Kongress. Wissenschaftliche Buchgesellschaft. Darmstadt, 1976 p. 86.

²² Duchhardt, Heinz : Balance of Power und Pentarchie. Schöningh. Paderborn, 1997 p. 19.

sociologist Pierre Bourdieu's generalist schemes of *habitus*²³. Did the discursive community of diplomats have a *legal habitus*, rather than a proper theory ?

(2) This concept did not only serve *internally*, on the diplomatic *αγορά* (1), clothed by the veil of secrecy, but also as an *external image*, in the European public sphere (2). Or, as a model of representation with which the formal outcomes of relations between sovereigns ought to be in accordance. In other words, balance of power was not just a mere pretext or a mendable *causa justa* to wage war²⁴. In the beginning of the eighteenth century, it had a permanent and stabilising function in the international system: it delivered the framework to safeguard and amend peace treaties.

The representation of the balance Duchhardt quoted in art. III²⁵ of the Ripperda Treaty made reference to the peace of Utrecht. The former treaty seemed to complete the latter peace agreement by ending the formal state of war between King Philip V of Spain (1683-1746) and Emperor Charles VI of the Holy Roman Empire (1685-1740). It is in this sense that we should understand French nineteenth-century scholar Arsène Legrelle's decision to take 1725 as the *terminus ad quem* of his monumental *La diplomatie française et la Succession d'Espagne*. The two pretenders to the vacancy on the Spanish Habsburg throne in 1700 finally came together a quarter of a century later²⁶.

Article III of the 1725 Treaty served to create an appearance of bringing the situation into line with the Peace of Utrecht²⁷. In reality, the secret clause to the Spanish-Austrian arrangement²⁸ projected a marriage between the Infant Don Carlos, eldest son of Queen

²³ "a system of dispositions, that is of permanent manners of being, seeing, acting and thinking"... "a set of acquired characteristics which are the product of social conditions" Bourdieu, Pierre: *Habitus*. In: Hillier and Rooksby (eds.): *Habitus: a sense of place*. Ashgate. Aldershot, 2005 p. 43 and 46.

²⁴ Mattei, Jean-Mathieu: *Histoire du droit de la guerre, 1700-1819* p. 377.

²⁵ CTS XXXII, p. 44: "*ad constituendum duraturum in Europa aequilibrium ea visa fuerit ut pro regula statuatur ne Regna Galliae et Hispaniae, ullo umquam tempore, in unam eandemque personam, nec in unam eandemque lineam coalescere uniriue possent*"

²⁶ Legrelle, Arsène : *La diplomatie française et la Succession d'Espagne: 1659-1725*. Pichon. Paris, 1892, vol. IV pp. 738-771. Although Legrelle particularly enjoys painting a black picture of the German and Dutch interests in the War of the Spanish Succession, his primary source-work in the Quai d'Orsay and in Madrid remains excellent.

²⁷ For an overview of older works on Utrecht, see Duchhardt, Heinz : *Gleichgewicht der Kräfte*, pp. 41-68. However, one should complete it with the masterly cultural-anthropological study by Lucien Bély, incorporating insights from contemporary social sciences (Bély, Lucien : *Espions et ambassadeurs au temps de Louis XIV*. Fayard. Paris, 1990 905 p.).

²⁸ Du Mont, Jean : *Corps universel diplomatique du droit des gens*, v. VIII/2, nr. XXXVI, pp. 106-113 (Peace Treaty, 30 April 1725), XXXVII, pp. 113-114 (Treaty of Alliance, 30 April 1725), nr. XXXVIII, pp. 114-121 (Treaty of Commerce and Navigation, 1 May 1725). The attentive reader will remark the absence of a marriage clause in the published treaties. The union between Maria Theresia and Don Carlos was agreed on secretly and reported as such to the Commons by Horatio Walpole (1678-1757), ambassador in Paris and brother of Britain's Prime Minister Robert Walpole (Pearce, Edward : *The Great Man: sir Robert Walpole, Scoundrel, Genius and Britain's First Prime Minister*. Jonathan Cape. London, 2007 p. 231).

Elisabeth Farnese (1692-1766), second spouse to Philip V of Spain²⁹, and the Archduchess Maria Theresia, eldest daughter to Emperor Charles VI. In view of the exclusion of women at the election of a King or Emperor of the Romans, Carlos would find himself sitting on Charlemagne's throne³⁰. Were Philip's last remaining son, the Infant Ferdinand, to de cease, he would inherit the Spanish monarchy too³¹. Even worse, if the sickly Louis XV came to pass away before producing a legitimate male heir, the Spanish Bourbons could rule in Versailles, Madrid and Vienna. In other words, the spectre of Charles V' *Monarchia Universalis* rose again³² !

II. Diplomacy and Legitimacy: the Ripperda Treaty (May 1725)

A. Forced to negotiate: Philip V and the lost territories

It is hard to understand the scandal provoked by the Treaty of Vienna, named after the 18th Century Dutch adventurer Jan Willem van Ripperda³³, without having regard to the preceding international acts. As the Treaty recalled in its preamble, Charles VI and Philip V were both competing for the Spanish crown after the de cease of Charles II of Spain in November 1700³⁴. At that time, the young candidates (17 resp. 15 years old) symbolised the larger power struggle between the houses of Bourbon and Habsburg, who both wanted to

²⁹ "Comme le mariage du Prince des asturies avec l'ainée des archiduchesses accomodoit peu les interets de la Reine Catholique, et ceux de l'infant Don Carlos, il est vraisemblable que cette Princesse a d'abord pris la resolution de faire tourner la negociation en faveur de son fils", N.A., SP, 80-55, Common Relation of St. Saphorin and du Bourg to Charles Townshend, secretary of state for the Northern Department, Vienna, 11 May 1725, s.n.

³⁰ This happened with Maria Theresia's husband, Franz Stephan of Lorraine. See Zedinger, Renate : Franz Stephan von Lothringen (1708-1765). Böhlau Verlag. Wien, 2008.

³¹ "Ripperda parle ouvertement du mariage de Don Carlos comme d'une asseurée, et il dit que le Prince des Asturies est Etique, et qu'il ne peut pas vivre, l'on voit à quoi celà prepare..." (N.A., SP 80-55, St-Saphorin to Charles Townshend, private letter, Vienna, 11 May 1725, s.n.). Don Ferdinand (the later Ferdinand VI of Spain) was considered to be in a feeble state of both mind and body (Bély, Lucien : Les relations internationales en Europe, XVIe-XVIIIe siècles. PUF. Paris, 1992³ p. 455.

³² Bosbach, Franz : *Monarchia universalis. Ein politischer Leitbegriff der frühen Neuzeit*. Vandenhoeck & Ruprecht. Göttingen, 1988 p. 64.

³³ Johan Willem de Ripperda y Diest (1690-1737). A plenipotentiary for the Republic at the Congress of Utrecht, Ripperda converted himself to Catholicism as Dutch ambassador in Madrid (1715-1718) and served Philip V afterwards, rising to the position of most potent minister thanks to his achievements in Vienna. In December 1725, Ripperda was dismissed. He fled to the British ambassador William Stanhope's apartment, but was arrested there (in violation of international law, which accorded the privilege of inviolable asylum to the residences, see Réal de Curban: *La Science du Gouvernement*, t.5 p. 106). After eighteen months of detention in the Alcázar of Segovia, he escaped via Britain to Morocco. On the tumultuous life of Ripperda, see Campbell, John : *Memoirs of the Duke of Ripperda: first ambassador from the States-General to His Most Catholick Majesty, the Duke and Grandee of Spain; afterwards Bashaw and Prime Minister to Mully Abdalla, Emperor of Fez and Morocco, &c.* Containing a succinct account of the most remarkable events which happen'd between 1715 and 1736. John Stagg & Daniel Browne. London, 1740; Syveton, Gabriel: *Une cour et un aventurier au XVIIIe siècle. Le baron de Ripperda*. Paris, 1896; van der Veen, Sytze : *Spaanse Groniger in Marokko: de levens van Johan Willem Ripperda (1682-1737)*. Bert Bakker. Amsterdam, 2007.

³⁴ Maquart, Marie-Françoise: *Le dernier testament de Charles II d'Espagne*. In: Bély (dir.) : *La présence des Bourbons en Europe, XVIe-XXIe siècles*. PUF. Paris, 2000 pp. 111-123.

found a second branch in Madrid³⁵. Thirteen years later, a separate Spanish house of Bourbon was installed in the Spanish Kingdoms³⁶. The main clauses of the Peace of Utrecht, which consisted in reality of multiple bilateral agreements, were written by France and Great Britain³⁷, who co-managed European affairs during what Emmanuel Le Roy Ladurie has called “les trentes heureuses”³⁸. In a period stretching from 1713 to Frederick the Great’s invasion of Silesia in December 1740, no major European war occurred. Although the Franco-British cooperation was more nuanced³⁹ than the previous label suggests, the association of both powers was exceptional. It dominated any new initiative.

Both Philip and Charles were unsatisfied with the outcome of 1713, but had to acquiesce temporarily, due to the overwhelming European power consensus supporting it⁴⁰. They never concluded a formal peace and kept on quarrelling about two territories: Spain and Italy. Charles kept a Spanish and Italian council at his Viennese court. He was “governed” by his Spanish favourites Rialp and Folch de Cardona. Philip silently aspired to climb on the French throne once the young Louis XV disappeared. Less silent was his ambitious spouse, the turbulent queen Elisabeth Farnese, female heir to one of Italy’s most prominent noble families. Italy had been a theatre of Franco-Habsburg confrontation since Charles VIII’s invasion at the end of the fifteenth century. During the War of the Spanish Succession, however, the Austrian Habsburgs replaced the Spanish branch in most of their dominions. Naples, Milan, Sardinia and the Toscan Presidia were held by Charles VI.

Neighbouring these Italian lands, the duchy of Parma and Piacenza, ruled by the childless duke Francesco Farnese (1678-1727), was to fall into Elisabeth’s descendents, once his brother Antonio (1679-1731) disappeared without a legal male offspring. Thanks

³⁵ Bérenger, Jean: Le conflit entre les Habsbourg et les Bourbons (1598-1792). In: *Revue d’histoire diplomatique*, 2002, pp. 193-232. Cruz González, Daniel: Une guerre de religion entre princes catholiques. Éditions de l’ÉHESS. Paris: 2006, 304 p.

³⁶ See further: Bérenger, Jean: La question de la succession d’Espagne au XVIII^e siècle. In: *La présence des Bourbons en Europe*, edited by Lucien Bély, pp. 75-91.; Frey, Linda and Marsha (eds.): *The Treaties of the War of the Spanish Succession: an historical and critical dictionary*. Greenwood Press. Westport (Conn.), 1995.

³⁷ Preliminaries between Queen Anne of Great Britain and Louis XIV, London, 27 September O.S./8 October N.S. 1711, Du Mont, VIII/1, nr. CXIX, p. 281. See Bély, Lucien: *L’art de la paix en Europe: naissance de la diplomatie moderne, XVI-XVIII^e siècle*. PUF. Paris 2007, pp. 465-466. [The abbreviation O.S. stands for Old Style or Julian Calendar, used in Britain until 1752, which differed about two weeks from the Gregorian Calendar, applied on the continent].

³⁸ Le Roy Ladurie, Emmanuel: *L’Ancien Régime. T. 2: l’absolutisme bien tempéré (1715-1770)*. Hachette. Paris, 1991 p. 93. See also McKay and Scott, who label the Franco-British alliance

³⁹ For the evolution of British foreign policy towards a realignment with Austria after 1727: Black, Jeremy: *George II, sir Robert Walpole and the collapse of the Anglo-French Alliance 1727-1731*, Black. Newcastle, 2005 and Black, Jeremy: *British neutrality in the war of the Polish Succession, 1733-1735*. In: *International History Review* VIII (1986), pp. 345-366.

⁴⁰ Convention between the belligerent parties, by the mediation of the British plenipotentiaries for the evacuation of Catalunya and for an armistice in Italy, Utrecht, 14 March 1713, Du Mont: *Corps universel diplomatique*, VIII/1, nr. CLXVII, p. 327-330).

to dynastic intricacies⁴¹, she could also claim the Grand-Duchy of Tuscany, where it was very likely that the de'Medici-dynasty would die out with Cosimo III (1642-1723) and his childless son Gian Gastone (1671-1737). Both claims were refuted by the Emperor, who considered the territories to be masculine fiefs of the Holy Roman Empire, implying their return to the Emperor, who could then decide who to attribute the investiture⁴².

To complicate matters even further, the duke of Savoy had acquired the Isle of Sicily thanks to British mediation⁴³, on the basis of an unilateral cession act by Philip V dating 10 June 1713. This document contained a right of reversion to the Spanish crown for the kingdom, which had been in the hands of the house of Aragon since 1282⁴⁴.

Philip V manifested his discontent by bluntly invading Sardinia in 1717⁴⁵, and Sicily the subsequent year. James Stanhope (1673-1721)⁴⁶, principal minister of George I, and archbishop Guillaume Dubois (1656-1723)⁴⁷, French envoy in London, mustered a coalition with the attacked powers Habsburg and Savoy. The Treaty of the Quadruple Alliance, dating 2 August 1718 (N.S.) and signed in London, foresaw an exchange between

⁴¹ Elisabeth's great-grandfather Cosimo III de'Medici, grandduke of Tuscany (1590-1621) constituted the link with Gian Gastone de'Medici. The claims to the double duchy of Parma/Piacenza were founded on Elisabeth's position as a daughter to Odoardo Farnese (1666-1693), brother of both Francesco and Antonio, who died before he could accede to the throne. I refer to the Genealogies in annex.

⁴² The Emperor's competence to decide in these matters was not disputed by the other powers and recognized as such in the treaty of the Quadruple Alliance, art. V ("*Sacri Romani Imperii Feudus masculini*"; Rousset de Missy, Jean: *Les intérêts présents des puissances de l'Europe, Fondez sur les Traitez conclus depuis la Paix d'Utrecht inclusivement, & sur les Preuves de leurs Prétensions particulieres*. Adrien Moetjens. La Haye, 1733 pp. 26, 61 (Parma-Piacenza) and 98 (Tuscany)). However, this decision, by nature, touched upon the European public order. Thus, Charles had to consult his colleagues, derived the legitimacy of his decision from them and was de facto bound by the general rules of the system. If Charles were to act without broader consent, his decision would be all but a paper one. (Steiger, Heinhard: *Völkerrecht versus Lehnrecht ? Vertragliche Regelungen über reichsitalienische Lehen in der Frühen Neuzeit*. In: Steiger, Heinhard: *Von der Staatengesellschaft zur Weltrepublik ? Nomos Verlag. Baden-Baden, 2009, pp. 233-266*). As a result, the power to grant the investiture in Italy, although it ought to be less restrained than within the Empire, where the Peace of Osnabruck applied, fell into the same category of formal and ritual respect, but material decline. See Stollberg-Rillinger, Barbara: *Le rituel de l'investiture dans le Saint-Empire de l'époque moderne : histoire institutionnelle et pratiques symboliques*. In : *Revue d'histoire moderne et contemporaine* LVI (2009), pp. 7-29.

⁴³ McKay, Derek : Bolingbroke, Oxford and the defense of the Utrecht settlement in Southern Europe. In: *English Historical Review* LXXXVI (apr. 1971) pp. 264-284. Promise by treaty in art. XIV, Treaty of Peace & Alliance between Queen Anne of Great Britain and Philip V of Spain, 13 July 1713, *Ibid.*, p.396.

⁴⁴ Art. II, Instrumento de la Cession del Reyno de Sicilia, hecho por el Serenissimo Duque de Anjou como Rey de España a Victor Amadeo Duque de Saboya por el y sus Descendientes masculinos per perpetuamente, 10 June 1713, published in Du Mont : *Corps universel*, VIII/1, nr. CLXII, pp. 389-392.

⁴⁵ More in particular for this question, see Mongiano, Elisa : "*Universae Europae Securitas*" I trattati di cessione della Sardegna a Vittorio Amedeo II di Savoia. G. Giappichelli Editore. Torino, 1995. Philip launched the invasion while the Austrian army was occupied fighting the Ottomans on the Balkans, see Parvev, Ivan: *Habsburgs and Ottomans between Vienna and Belgrade (1683-1739)*. Columbia University Press. New York, 1995 pp. 168-176.

⁴⁶ James 1st Viscount Stanhope, see Williams, Basil: *Stanhope. A Study in Eighteenth-Century War and Diplomacy*. Clarendon Press. Oxford, 1932.

⁴⁷ Guillaume Cardinal Dubois, rose from humble origins to *de facto* prime minister during the Regency, see Aujol, Jean-Louis: *Le Cardinal Dubois, ministre de la paix*. Éditions du bateau ivre. Paris, 1948; Chaussinand-Nogaret, Guy. *Le Cardinal Dubois, 1656-1723 ou une certaine idée de l'Europe*. Perrin. Paris, 2000; Thomas, Jean Pierre : *Le Régent et le cardinal Dubois ou l'art de l'ambiguïté*. Payot. Paris, 2004.

Savoy and Austria, the former changing the rich island of Sicily for the less interesting Sardinia⁴⁸.

Philip V had no choice but to accede to the Treaty and to delegate his ministers to Northern France⁴⁹. His fleet being destroyed by the British and both the Basque country and Catalunya invaded by the French, he sacked his principal minister Giulio Alberoni⁵⁰. The Peace Congress of Cambrai⁵¹, which was called together in 1722, but had to delay its opening until 1724, served as a forum for the execution of the Quadruple Alliance.

B. The slow and potentially painful Congress of Cambrai

Legally, Philip's point of view was much firmer than one could expect. He still had to agree to the non-application of the reversion right concerning Sicily demanded by the Quadruple Alliance treaty, to which he was not a party⁵². Moreover, he still had not signed a peace treaty with Charles VI.

⁴⁸ Treaty & Alliance between Charles VI, Louis XV and George I, 22 July O.S./2 August N.S., London, Du Mont : Corps universel diplomatique, VIII/1, nr. CCII, pp. 531-541. The legal construction of the treaty is trilateral, putting forward the conditions under which the Duke of Savoy and Charles VI should proceed to the exchange of Sardinia for Sicily and with a possibility for the States-General to adhere to it (which did not happen). Although the mechanism was analogous to that of the 1697 and 1700 partition treaties for the Spanish succession, which were elaborated between Louis XIV and William III, to be subsequently opened within a limited delay to the Emperor, the accession of Charles VI was to be expected. Victor Amadeus II of Savoy, although a victim of the Spanish invasion, did not spontaneously join the coalition. The reason is geopolitical: situated between France and Austria, Victor Amadeus did not see a reason to oppose the sole invasion of Sardinia in 1717. He started negotiations with Spain in order to divide the map of Italy to his advantage. Turin chose sides only when Sicily, attributed to in 1713 to raise its court to the status of a royal one, was invaded in July 1718. The *de facto* loss of control of Sicily made Sardinia the second best choice.

⁴⁹ Philippi V. Regis hispaniarum accessio iterata, & per plenipotentiarum suum, ad Tractatum sive Concordatum Londini 2. Augusti cujusdem anni initum extensa, Den Haag, 17 February 1720, Du Mont: Corps universel diplomatique, VIII/2, nr. XI, p. 26.

⁵⁰ 1664-1752. Giulio Alberoni made his career as a diplomat for the Dukes of Parma, came to Spain with the French general Vendôme during the War of the Spanish Succession and arranged Philip's wedding with Elisabeth Farnese (1715). In 1717, he is created a Cardinal, just before the invasion of Sardinia. See Moore, George: Lives of Cardinal Giulio Alberoni and the Duke of Ripperda and Marquis of Pombal, three distinguished political Adventurers of the last Century exhibiting a View of the Kingdoms of Spain and Portugal during a considerable Time of that Period. J. Rodwell. London, 1814².

⁵¹ We refer to Lingens, Karl-Heinz : Kongresse im Spektrum der Friedenswährenden Instrumente des Völkerrecht. In: Duchhardt (Hrsg.): Zwischenstaatliche Friedenswahrung in Mittelalter und früher Neuzeit. Böhlau. Köln, 1991 pp. 205-226. Lingens bases his research on the archival records kept at the Quai d'Orsay (presently La Courneuve, Archives Diplomatiques), Alfred Braudrillart's Philippe V et la Cour de France Didot. Paris, 1890, t. 2-3 and Ottocar Weber's Die Quadrupel-Allianz vom Jahre 1718. Ein Beitrag zur Geschichte der Diplomatie im 18. Jahrhundert. Wien, 1887. The present intervention studies adds British diplomatic sources to this.

⁵² Art. VI, Treaty of the Quadruple Alliance, Du Mont : Corps universel diplomatique VIII/1, nr. CCII, pp. 531-533. Philip acceded to the Quadruple Alliance, which served as a Preliminary Peace, by the Treaty of The Hague, 17 February 1720, Ibid., VIII/2, pp. 26-27.

The unilateral renunciations called for by the Treaty of the Quadruple Alliance, whereby both monarchs gave up their claims to each other's territory⁵³, did not constitute a binding international norm. In practice, they continued to carry the titles referring to the territories lost (Milan, Naples, Sicily, Sardinia, the Southern Netherlands in the case of Philip V; Catalunya for Charles) or never even controlled (Castille, Leon, in the case of Charles VI).

When the congress opened, the expectations were such that the Anglo-French mediators would be the enforcers of the general European order, which would be reflected in a "Treaty of Cambrai". No union between the crowns of France and Spain, peaceful settlement of the succession questions in Parma-Piacenza and Tuscany, legal remedies for a swift exchange of Sicily and Savoy and respect for the British trade privileges in Spanish America⁵⁴. In addition to this, British and Dutch anger over the setting up of the Ostend Company, which traded with the Eastern Indies at the expense of other powers' merchants, would probably lead the Emperor to suppress it⁵⁵.

At Cambrai, the Austrian plenipotentiaries Windischgrätz and Penterriedter⁵⁶ asked the European sovereigns to recognize the Emperor's Pragmatic Sanction⁵⁷. By this document

⁵³ Renunciation by Charles VI, Vienna, 16 September 1718 (in execution of the Treaty of the Quadruple Alliance of 2 August 1718, cf. supra); Renunciation by Philip V (at the occasion of his accession to the Quadruple Alliance, San Lorenzo, 22 June 1720).

⁵⁴ Treaty of Navigation & Commerce between Queen Anne of Great Britain and Philip V, Utrecht, 28 November O.S./9 December N.S. 1713, Du Mont: Corps universel diplomatique, VIII/1, nr. CLXIX, pp. 409-422; Hatton, Ragnhild: George I. Yale University Press. New Haven, 2001² p. 273.

⁵⁵ Starting 1714 an extended in 1722, the Company (mainly run by foreigners) was destined to develop economic activity in the Austrian Netherlands. See Hertz, Gerald B., England and the Ostend Company. In: English Historical Review XXII (April 1907), pp. 255-279; Huisman, Michel: La Belgique commerciale sous l'empereur Charles VI: la Compagnie d'Ostende: étude historique de politique commerciale et coloniale. Lamartin. Bruxelles, 1902 XII + 555 p. The opening of the Spanish market in America went against the British commercial dominance agreed at Utrecht (e.g. Asiento or privilege for the introduction & sale of black slaves in Spanish America, Madrid, 26 March 1713, Du Mont : Corps universel diplomatique VIII/1, nr. CXXXIX, pp. 330-337).

From a legal point of view, the Dutch Republic denied the Emperor the right to start a commerce with the Indies from the Southern Netherlands, on the basis of art. V of the Spanish/Dutch Peace Treaty of Münster (30 January 1648), which forbade commercial undertakings in the Spanish Netherlands. These dispositions were confirmed by the Barrier Treaty of 15 November 1715 between Charles VI, George I and the States-General (Du Mont, VIII/1, nr. CLXXX, pp. 458-468). However, Charles' jurists claimed the natural law principle of *mare liberum* –nota bene developed by Hugo Grotius against the Spanish and British opinions of *mare clausum*– overruled private treaties between nations (e.g. Jean Du Mont de Carels-Kroon : La vérité du fait, du droit et de l'intérêt de tout ce qui concerne le commerce des Indes, établi aux Païs-Bas Autrichiens par octroi de Sa Majesté Impériale et Catholique. Mathieu Roguet. La Haye, 1723). On the subject and the role of the Flemish jurist Patijn and the continuous stream of pamphlets regarding the matter, see De Pauw, Frans : Het Mare Liberum van Grotius en Pattijn. Die Keure. Brugge, 1960.

⁵⁶ Ernst Friedrich Graf von Windischgrätz (1670-1727), president of the *Reichshofrat* since 1714; Christoph Freiherr von Penterriedter (+ 1728), experienced Imperial diplomat, secretary to Eugen of Savoy at the Rastatt negotiations, also present at Utrecht and Baden, former ambassador in Paris (1719-1722).

⁵⁷ E.g. "Demandes de sa sacrée majesté Imperiale et Catholique", N.A., SP 78-174, ff. 48v-49r, 12°. Charles tried to sell the recognition of his Pragmatic Sanction as a necessary complement of his guaranty of the French, Spanish, British and Savoyard successions through the Quadruple Alliance and Philip's accession to that instrument.

dating 19 April 1713⁵⁸, Charles wanted to avoid a foreign succession in the Habsburg hereditary lands. Having succeeded to his older brother Joseph, who –like himself- only had a female offspring, the risk was real that one of the princesses' spouses would come and seize power in Vienna.

C. The return to the “ancien système” and the rupture of the Balance

Both Philip and Charles only stood to lose from a Franco-British mediated deal at Cambrai: Philip would have to accept another humiliation by France and British meddling in Italy and would probably not recuperate Gibraltar⁵⁹, Charles was about to see the lucrative Ostend Company, instrument of an ambitious policy to turn Austria from an exclusively territorial to a maritime power, sink to the bottom of the sea⁶⁰. However, concluding a treaty with the “King of Spain and the Indies” could open the gates of America to his subjects⁶¹.

⁵⁸ Turba, Gustav : Die Pragmatische Sanktion. Authentische Texten samt Erläuterungen und Übersetzungen. Wien, 1913.

⁵⁹ “le Roy de la Grande Bretagne, embarrassé par l'affaire de Gibraltar et de Port Mahon, bien loin de faciliter nôtre Paix avec l'Espagne, la traversoit, ainsi il nous étoit convenable de finir sans lui” (Eugen of Savoy to the Savoyard envoy Breille, N.A., SP, 80-55, Lettre Secrète, Vienna, 11 May 1725, s.n.) James Stanhope (1673-1721), principal minister of George I, agreed to the restitution of the rock and city of Gibraltar (conquered during the War of the Spanish Succession). This was confirmed by a handwritten letter from his king to Philip V, dated 12 June 1720. The promise was needed to get Philip V to agree to the framework of the Quadruple Alliance (Treaty of London, 2 August 1718), which he subsequently did (17 February 1720, Treaty of The Hague). Internal British political circumstances (notably the absence of a parliamentary majority), however, did not permit the execution of this promise. The possession of the rock was too important for commercial and naval control over the Mediterranean. This interference in what the Spanish saw as their *mare nostrum* caused considerable tensions with Madrid, leading to the siege of Gibraltar in 1727. Elisabeth Farnese repeatedly confronted British ambassador William Stanhope (the later Lord Harrington) with the original letter, symbol of British betrayal (Kamen, Henry : Philip V of Spain: the King who reigned twice. Yale University Press. New Haven, 2001, p. 160).

Writing 44 years later, Réal de Curban pointed to George's letter as a proof that unilateral declarations by a monarch do not create any obligations on his side: “*Les Plénipotentiaires doivent bien se garder de croire qu'on puisse assurer des conditions importantes, sur la foi de quelques lettres que les Princes, qui accordent ces conditions, & qui ne voudroient pas qu'elles parussent, offrent quelquefois d'écrire au Souverain en faveur duquel ces conditions sont stipulées. Ce n'est point par des lettres que la foi des conventions peut être assurée, c'est par des Traités autentiques, surtout lorsque les conditions ne sont pas personnelles, ou qu'on traite avec un Prince dont l'Etat n'est pas purement monarchique*” (Réal de Curban : La Science du Gouvernement – t. V, Ch. III, Sect. I, Art.VIII/V p. 562).

⁶⁰ Charles VI could engage in competition with Britain in two commercial arena's, by granting privileges to the Imperial Company at Ostend, which could replace the once flourishing port of Antwerp for the Atlantic, and at Trieste, in the Adriatic. Commerce was at the forefront of Imperial diplomacy and was only second to the recognition of the Pragmatic Sanction. At the Peace of Passarowitz with the Ottomans, Charles insisted on commercial advantages as well, which he effectively obtained (Treaty between Charles VI and Sultan Ahmed, 21 July 1718, Passarowitz, Du Mont, VIII/1, nr. CXIX, pp. 520-523; Commerce Treaty, 27 July 1718: 528-530). Already during the Congress of Cambrai, Charles insisted on the necessity of opening the Spanish colonies for his merchants, as a concession for the Italian investitures (N.A., SP, 78-174, f. 49r, 13°).

⁶¹ Subsequently, when news of the Ripperda Treaty leaked, the Imperial Company's stock jumped by 18 pct (Pirenne, Henri: Histoire de Belgique. Des origines à nos jours. T.3: de la fin du régime espagnol à la Révolution belge. La renaissance du livre. Bruxelles, 1950 p. 110).

This happened, when dynastic coincidence blocked the workings of the diplomats. On 10 January 1724, Philip V suddenly abdicated in favor of his son, don Luis (°1707 out of the king's first wedding)⁶². However, on 31 August of the same year, Luis succumbed to the pocks. His father returned to government, after papal consultation. But the influence of Elisabeth Farnese grew: she pushed her husband to accept the crown.

The new year 1725 brought a grave abdominal colic to the young Louis XV (1710-1774), putting his life in danger. The Spanish Infanta María Ana Victoria (1718-1781) had been promised to the 14 year-old king in a double Franco-Spanish arrangement, involving don Luis and Mademoiselle de Beaujolais, the Duke of Orléans' daughter. Nevertheless, at the age of six, it was very unlikely the Infanta would be able to produce an heir in the short term. The Duke of Bourbon, prime minister, decided to send her back to Spain in February, for the sake of the dynasty. Subsequently, the enraged Spanish court⁶³ decided to bypass the Congress. Since both Britain⁶⁴ and France had proven to be unreliable when it came to direct Spanish interests, Elisabeth Farnese turned to the Emperor, her erstwhile direct opponent in Italy. At the Congress of Cambrai, *"From apparent contempt and animosity, [the Imperial and Spanish ministers] were come at once to the greatest complaisance and intimate correspondence"*⁶⁵.

The relations of the Viennese court intrigues have come to us by the relations of British ambassador St-Saphorin⁶⁶ and du Bourg⁶⁷, Louis XV's emissary. The mere fact that the two diplomats composed their insights together, points to the intimate relationship between both powers' targets and visions. Ripperda negotiated in secret with Prince Eugene of

⁶² The abdication episode is a symptom of Philip V's recurring mental disorder. The King vacillated between dark depression (during which he pretended to be dead, or to be a frog) and moments of frenetic hyperactivity (coinciding with periods of martial tension). See Kamen, Henry : Philip V of Spain, pp. 139-150.

⁶³ *"La reine d'Espagne a pressé avec tant de soin ces épousailles dans l'esperance de lier tellement par là le Roy Très Chrétien, que [...] le Mariage de l'Infante ne pût pas [...] être rompu."* (Common relation of St-Saphorin and du Bourg to Charles Townshend, N.A., SP 80-55, Vienna, 11 May 1725, s.n.).

⁶⁴ Elisabeth Farnese offered the mediation to Britain alone after the sending back of the Infanta, but George I declined this offer (Coxe, William: Memoirs of Horatio, Lord Walpole: Selected from his Correspondence and Papers, and connected with the History of the Times, from 1678 to 1757. I: 1678-1740. Longman. London, 1820, p. 178).

⁶⁵ Marchmonth and Whitworth to the Duke of Newcastle, Cambrai, 31 January O.S./11 February N.S. 1725, N.A., SP 78-176, f. 17r.

⁶⁶ François Louis de Pesme, seigneur de St-Saphorin (1669-1737). Protestant Swiss diplomat (Geneva). In Austrian military service during the Turkish War (1683-1699), confidant of Eugen of Savoy. Left Vienna, angry with the intolerant catholic policy of Bishop Friedrich Karl von Schönborn, Imperial Vice-Chancellor. Served from 1716 as a diplomat for George I of Great Britain-Hannover (see Thompson, A.C. : Pesme de Saint-Saphorin, François Louis de. In: Oxford Dictionary of National Biography. Oxford University Press. 2005; online edition, Jan 2008 [http://www.oxforddnb.com/view/article/73886, last accessed 13 March 2010]).

⁶⁷ Jean Baptiste du Bourg (1690-1728), French ambassador in Vienna, 1717-1725. See Ulbert, Jörg: Frankreichs Deutschlandpolitik im zweiten und dritten Jahrzehnt des 18. Jahrhunderts. Duncker & Humblot. Berlin, 2004 p. 441.

Savoy-Carignan⁶⁸ and Court Chancellor Ludwig Philip Graf Sinzendorf⁶⁹, but most of his transactions were leaked in court gossip⁷⁰.

In his separate very private letter, relating amongst others a vivid discussion with the Viennese minister Count Palm, St-Saphorin stressed the importance of the union between the crowns of France and Britain for the safeguarding of the system. Doing otherwise, would give lead to an Austro-Spanish hegemony, which would be detrimental to the general tranquillity and –of course- to Britain in particular.

These two letters explains us in particular why the balance did matter in the eighteenth century, contrary to what has been suggested in our introduction. The reference to the balance in art. III as “*duraturum in Europa aequilibrium [...] ut pro regula statuatur, nè Regna Galliae & Hispaniae [...] uniri possent*”⁷¹ is not exactly one of observance of Utrecht’s rules. Who could tell this better than Sinzendorf ? When asked by Saint Saphorin whether his manoeuvre would not bring “*de l’ombrage à l’Europe*”, the Court Chancellor replied “*il seroit bon que nous fussions réunis avec l’Espagne; car par là les choses seroient remises dans l’ancien système*”⁷². In other words, Sinzendorf was satisfied to have constructed an entangling alliance, possibly restored a dynastic encirclement of France⁷³. “*Ils veulent chercher à exciter de tous côtés des differens, afin de tenir, comme le dit fort plaisamment le marquis de Breille*”⁷⁴, boutique ouverte de mediations.”

⁶⁸ 1663-1736, Eugen of Savoy negotiated parts of the agreement at night in his Viennese Belvédère gardens. Braubach, Max : Prinz Eugen von Savoyen: eine Biographie. 4: der Staatsmann. Oldenbourg. München 1964 p. 227; Most recent biography: Paoletti, Ciro : Il Principe Eugenio di Savoia. Stato Maggiore dell'Esercito. Roma, 2001.

⁶⁹ 1671-1742. Since 1715, Sinzendorf supervised foreign relations and domestic legal affairs as *Hofkanzler*. See Linda and Marsha Frey: The Treaties of the War of the Spanish Succession p. 411.

⁷⁰ “*Nous nous sommes prévalus de l’esprit singulier qui régné parmi les ministres italiens, pour les mettre tous en mouvement ; ces messieurs, dont le principal but est de ramasser des nouvelles pour écrire à leurs cours, et parmi lesquels nous n’en connoissons aucun qui soit assés prudent pour distinguer ce qu’ils doivent taire d’avec ce qu’ils doivent dire...*” (N.A., SP 80-55, Vienna, 11 May 1725, Common Relation, *ibid.*).

⁷¹ Du Mont: Corps universel diplomatique, VIII/2, nr. XXXVI, p. 106. Philip V formally abandoned his rights of succession to the French throne by a unilateral declaration on 5 November 1712 (Du Mont, VIII/1, nr. CXXXVI, pp. 310-312). Throughout his reign, there was discussion about their validity, since it was publicly known the monarch eyed the French throne, occupied by a monarch without heir until 1729 and the birth of a Dauphin.

During the 1719 invasion of Spain by a French army (as a collective reprisal for the invasion of Sicily the past year), Philip V inundated the French armies with leaflets asserting his rights to the French throne (Kamen, Henry: Philip V of Spain p. 126). Already during the negotiations ending the War of the Spanish Succession, Jean-Baptiste Colbert de Torcy (1665-1746), Louis XIV’s Secretary for Foreign Affairs, held the declaration, drafted by jurists from the University of Oxford, to be contrary to the French *lois fondamentales* (see Baudrillart, Alfred : Examen des droits de Philippe V et de ses descendants au trône de France, en dehors des renonciations d’Utrecht. In : Revue d’histoire diplomatique III (1899), pp. 161-191, 354-384).

⁷² N.A., SP 80-55, Common Relation, *ibid.*

⁷³ Confirmed by count Palm in his conversation with St Saphorin (N.A., SP 80-55, St Saphorin to Townshend, Vienna, 11 May 1725, private letter, s.n.): “[...] *nous avons rétabli l’ancien système, et nous avons séparé l’Espagne de la France, tellement que nous sommes en état de prendre a present avec Sa Majesté des mesures solides et efficaces contre cette dernière Puissance.*”

⁷⁴ Envoy of the duke of Savoy.

However, the necessity of the balance metaphor underlines its cardinal place in the *Société des princes*⁷⁵ of the moment. Consisting the most recurrent pretext for going to war in the 17th Century, the diplomat who violated the principle, exposed himself to the wrath of all other European monarchies.

St Saphorin confirmed the centrality of the balance in his conversation with the Habsburg minister count Palm, explaining why a counterbalance of Austria an France made sense to him:

*J'avoüe que la France est une Puissance formidable, et qu'il n'y a aucune comparaison entre les forces de l'Empereur, et celles d'aucune autre Puissance de l'Europe, prises separement comparativement avec celles de cette Couronne mais les extrémités où Elle a été reduite pour avoir voulu donner sous le Regne de Louis XIV l'essor à son ambition, et ce qu'Elle en souffre encore à present, luy ont appris, et apprendront à tous ceux qui voudront s'ériger en Dictateurs de l'Europe, les perils auxquels une pareille entreprise expose. Et tandis que cette couronne suivra des maximes aussi modérées et aussi saines que celles qu'Elle a observées depuis la mort de Louis XIV, il est bon qu'Elle soit dans un degré de puissance capable de retenir tous ceux qui voudroient troubler la tranquillité publique*⁷⁶”.

By plotting with the Emperor and writing a universalist plan to dominate Europe, the Spanish diplomacy actively undermined the transactions at Cambrai⁷⁷. The Congress, as the expression of balance diplomacy, counted representatives from the lesser Italian princes. Among those, count Maffei, representing the king of Sardinia, who had his territory invaded by Spain in July 1718. Quoting British representatives Marchmont and Withworth⁷⁸,

*“[he] looks upon the Balance of Italy to be render'd very precarious by this new agreement, and the abandoning entirely the interests of all the lesser Princes there; and consequently his Master's security to be pretty much weaken'd by it [...] The mortification will scarce be personal.*⁷⁹”

When the Congress broke apart, the Spanish diplomats Santistevan⁸⁰ and Beretti Landi⁸¹ did not invite the French representatives. Doing this, they prolonged the exclusion strategy,

⁷⁵ Bély, Lucien: *La société des Princes*, p. 18.

⁷⁶ N.A., SP 80-55, St Saphorin to Townshend, Vienna, 11 May 1725, Private Letter, s.n., Ibid.

⁷⁷ Cf. letter from the Earl of Marchmont and baron Withworth, having sounded out Spanish Extraordinary Ambassador and Plenipotentiary Santistevan on his knowledge of Ripperda's entreatings “*may he went so far as to suppose that the Queen of Spain herself was ignorant of it, but there are so many solid reasons to persuade us of the contrary, and these have been strengthened by so many circumstances which we have observed here, from the very beginning of this intrigue, that we cannot give any credit to what he has asserted*”, Cambrai, 16th May 1725 N.S., N.A., SP 78-176, f. 160v-161r. Cf. also Count Morville, French Secretary of State for Foreign Affairs on the Imperial diplomat Fonseca: “*pretty much out of countenance, when it was likewise observed to him, how little the dates agreed with the turn he endeavour'd to give this transaction in his harangues.*” (Ibid., f. 164r)

⁷⁸ Alexander Hume Campbell, 2nd earl of Marchmont (1675-1740) and Charles Baron Withworth (1675-1725) were both experienced diplomats, but not first rank.

⁷⁹ Ibid., ff. 163v.-164r.

aiming at a division in the mediating couple. To no avail, since the British ambassadors extraordinary Marchmont and Withworth withheld their agreement⁸².

And what better mark of the importance of representations and symbols to our Balance-phenomenon, than the downgrading of the festivities at the Imperial representative Penterridter's residence, to a

“handsome entertainment as usual, instead of a solemn feast [...], with their families in their plain liveries; no mark of distinction as to the occasion, not so much as a health drunk on the good conclusion of the treaty and not the least mention made of it in all their discourse”⁸³.

The British representatives concluded their description of the final symposia at Cambrai by pointing to the necessity of informing the Duke of Newcastle of these “Trifles”. *“Everything is material in such a crisis, when the eyes of the Publick are on each step”⁸⁴*. Few days later, the Congress was no more⁸⁵. Europe prepared itself for the building-up of two power blocks, threatening to set the continent ablaze from the Baltic to the Mediterranean⁸⁶.

III. Conclusion: the image of the balance in legal doctrine

The Balance of Power did matter to the community of contemporary diplomats. Citing the Ripperda Treaty as an example of its *discursive power*⁸⁷, is relevant. Not as regards its application, since the treaty without any doubt tried to undermine the European system, but with respect to the *opinion iuris* between the monarchs on its vigour.

⁸⁰ Manuel Domingo de Benavides y Aragón, count of Santisteban del Puerto (1682-1748) (Ozanam, Didier; Ozanam, Denise: *Les diplomates espagnols au XVIIIe siècle*. Casa de Velázquez – Maison des Pays Ibériques. Madrid – Bordeaux, 1998 p. 182).

⁸¹ Lorenzo Verzuolo, Marquis de Beretti Landi (1654-1725). In Philip V's service since 1702, retired to Brussels in March 1725 after the break-up of the Congress (Ozanam: *Les diplomates espagnols*. p. 465).

⁸² *“Great Britain and France continue firmly united for preserving the Peace of Europe”* (Ibid., f. 168v) [...] *it was to be feared the signing [...] of such a guaranty [...] would extremely lessen the Reputation of Great Britain & France in the eyes of the World, since they had appeared at the Congress at first in the quality of mediators; and were now only suffered to come in as accessories, a favour usually reserved for petty princes, or such at least as had no minister on the Place.”* (Ibid., ff. 168v-169r).

⁸³ Ibid., f. 162r.

⁸⁴ Ibid., f. 162v.

⁸⁵ Polwarth (created Lord Marchmont in the meanwhile) and Withworth to the Duke of Newcastle, Secretary of State for the South, Cambrai, 23 May 1725, N.A., SP 78-176, s.n.

⁸⁶ Alliance between Louis XV, George I and Frederick William I of Prussia, Hannover, 3 September 1725 (later joined by Denmark, Sweden and the Dutch Republic). Charles VI and Philip V made an alliance with Czarina Catharina I and detached Frederick William from the former treaty in 1726. Since none of the promises made by Charles VI regarding don Carlos (installation of in Parma/Piacenza and Tuscany, marriage to the Archduchess Maria Theresia) were honored, Elisabeth Farnese deserted the Austrian alliance and made a separate Treaty with France and Britain (Treaty of Seville, 9 November 1729). A new congress was called together at the Preliminaries of Paris (31 May 1727), where Charles VI had to acquiesce to a seven year suspension of the Ostend Company's Imperial patent. See: Höfler, C.: *Der Congress von Soissons*. Nach den Instructionen des Kaiserlichen Cabinetes und den Berichten des Kaiserlichen Botschafters Stefan Grafen Kinsky. Kaiserlich-Königlicher Hof- und Staatsdruckerei. Wien, 1871-1876 (2 v.).

⁸⁷ An association supporting a possible application of Bourdieu's group analysis (cf. supra), also made by Rill, Bernd: *Karl VI.: Habsburg als barocke Grossmacht*. Verlag Styria. Graz, 1992 p. 138.

Much more than the Peace Instruments of Westphalia, the Treaties of Utrecht can be considered to be the true “*naissance*” of this political concept, consequence of the legal liberty and equality of states⁸⁸. If the mainstream 19th century doctrine is to be labelled “*Positivist*”⁸⁹, since it adhered to the balance as a way of coordinating formal legal state acts, it derived this framework from the predecessor’s treatises in the 18th century⁹⁰.

Starting with Christian Wolff (1679-1750)⁹¹, the balance came in the perimeter of legal doctrine. The Swiss scholar Emer de Vattel (1714-1767), considered the continent to be bound by the common rules of international society, although he was writing in the middle of the wars initiated by Frederick the Great of Prussia. The balance was classified in Book III, within the “*causes justes de la guerre*”. One could thus see it as an argument easy to twist and turn one side or another. However, this rule should be interpreted in the light of the events that preceded Vattel’s work.

“L’Europe fait un système politique, un Corps, où tout est lié par les relations & les divers intérêts des Nations, qui habitent cette partie du Monde. Ce n’est plus, comme autrefois, un amas confus de pièces isolées, dont chacune se croyait peu intéressée au sort des autres, et se mettait rarement en peine de ce qui ne la touchait pas immédiatement. L’attention continuelle des souverains à tout ce qui se passe, les ministres toujours résidents, les négociations perpétuelles, font de l’Europe moderne une espèce de république, dont les membres indépendants, mais liés par l’intérêt commun, se réunissent pour y maintenir l’ordre et la liberté [...] On entend par là une disposition des choses, au moyen de laquelle aucune puissance ne se trouve en état de prédominer absolument, et de faire la loi aux autres⁹². [...] Il est plus simple, aisé, et plus juste [...] de former des confédérations, pour faire tête au plus puissant et de l’empêcher de donner la loi”

Vattel saw the balance as a integrated, perpetually managed system of negotiation and amendment, just as the episode described above indicates. In order to obtain the realisation of their wishes, Europe’s monarchs had to conform to common expectations and to a

⁸⁸ Jouannet, Emmanuel : Emer de Vattel et l’émergence doctrinale du droit international classique. Pédone. Paris, 1998 pp. 238-248 ; Osiander, Andreas : The States System of Europe, 1640-1990 : Peacemaking and the Conditions of International Stability. Clarendon Press. Oxford, 1994 p. 133 ; Steiger, Heinhard : Rechtliche Strukturen p. 613.

⁸⁹ Koskenniemi, Martti : The Gentle Civilizer of Nations: the rise and the fall of international law, 1870-1960. Cambridge University Press. Cambridge, 2001 p. 17.

⁹⁰ Abbé de Burlé Réal de Curban: La science du gouvernement, t. 5: contenant le droit des gens. Les libraires associés. Paris, 1764; Moser, Johann Jakob: Grund-Sätze des jetzt-üblichen europäischen Völker-Rechts in Fridens-Zeiten. Hanau, 1750.

⁹¹ Wolff, Christian: Ius gentium methodo scientifica pertractatum. Clarendon Press. Oxford, 1934 [1764], IX, Ch. VIII, V, pp. 298-299.

⁹² De Vattel, Emer : Le droit des gens. London, 1758, Livre III (de la Guerre) ch. III (Des justes causes de la guerre), § 47, edited in: The Classics of International Law. Carnegie Institute. Washington, 1916, v. 2. (cf. also Steiger, Heinhard. Ius bündigt Mars. Das klassische Völkerrecht und seine Wissenschaft als frühneuzeitliche Kulturerscheinung. Reprinted in: Steiger, Heinhard : Von der Staatengesellschaft zur Weltrepublik p. 127).

common discourse. These patterns resided in formal treaties (*pacta sunt servanda*⁹³), but they were but one of the many instruments to express the *droit public de l'Europe*, which needed to influence behaviour outside of solemn, but incidental moments of reconciliation after a major crisis.

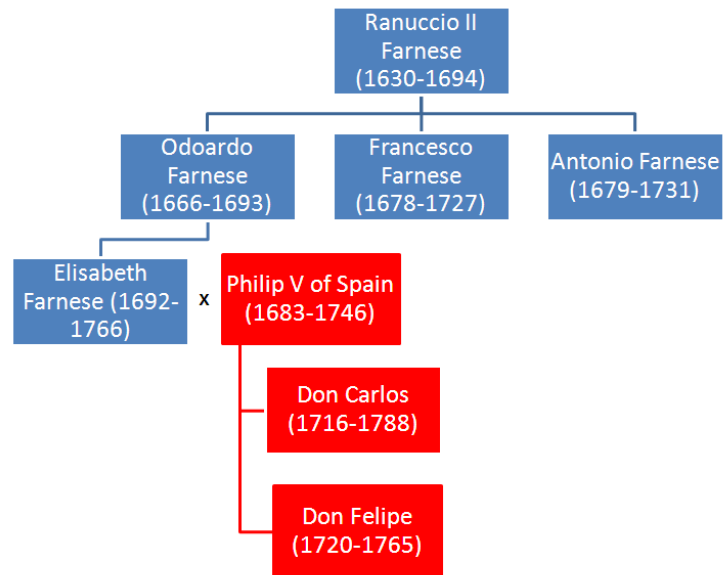
I would like to conclude on this third representation of the balance : first in diplomacy as a political-practical system, secondly in public opinion as a legitimate title, and finally in international doctrine as the framework of norm-creation. Far from being a “*chimère*”, the Balance of Power was so strong a norm on the international stage, that even those who violate her, like the Spanish and Viennese courts, advocated her and needed to conform their ambitions to this commonly accepted discourse. In this sense, it was as normative as many concepts of contemporary international law⁹⁴.

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⁹³ On the doctrinal “sacred” character of treaties and the seriousness of their perpetration, see Lesaffer, Randall: The Classical Law of Nations (1500-1800). In: Working Paper Series - SSRN <http://ssrn.com/abstract=1594444>, 22 April 2010, p. 14 [Last Accessed 30 April 2010].

⁹⁴ In response to Goldsmith and Posner’s skeptical approach of international law’s effectiveness, Howse and Teitel argue that such discursive convergences indicate the true scope of its normative force: “*The language of [international] law communicates a level of "seriousness" to a commitment that may have consequences for how other actors respond in their own behavior and the reputational consequences of reneging these commitments. States tend to want to justify their actions in universalist terms, and the language of law is particularly amenable to it, given its formal character. States need to water down their rhetoric appeal to more and more audiences and "law" that does not have such a content tied to particular religious, moral or civilizational outlook serves well this purpose.*” Howse, Robert; Teitel, Ruti: Beyond Compliance: Rethinking Why International Law Matters. In: New York University School of Law Public Law & Legal Theory Research Paper Series. Working Papers X (Feb. 2010), p. 23.

Annex 1: Simplified Genealogy of the Farneses in the Duchy of Parma/Piacenza



Annex 2: Simplified Genealogy of the de'Medici in the Grand Duchy of Tuscany

