The relevance of international law: a Hegelian interpretation of a peculiar seventeenth-century preoccupation*

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International law, traditional scholars of international politics tell us, is a useless fiction. Statesmen either do not follow legal stipulations or they do so only when it is in their interest to do it. International law plays no independent role in world politics since it can always be reduced to the more fundamental considerations of power politics. National interests simply do not bow to legal requirements.

Although many scholars take this relationship between law and self-interest to be an axiom valid regardless of different times and different cultural settings, a historical analysis will inevitably unearth a number of problems with the thesis. During the sixteenth and the seventeenth centuries, for example, statesmen often discussed legal issues with great seriousness and often at great length. One example of such statesmen is provided by the Swedish King Gustav II Adolf and the members of the Swedish Council of the Realm. In the discussions which preceded Sweden's intervention in the Thirty Years War in 1630 the Swedish leaders would return to legal arguments again and again. But how, then, should we explain this peculiar early modern preoccupation with matters of international law? Historians have given two radically different answers in reply to this question. The Swedes paid attention to international law, it has been argued, either because they had a genuine interest in the stipulations of morality, or because they needed a moralistic guise behind which they could conceal their policy of imperialism.

In this article I will present an alternative explanation which differs from both these traditional ones, and which defends the independent status and the relevance of international law. As I will argue, twentieth-century concepts like 'realism' and 'idealism' fit badly with these early modern discussions and they obscure the real issues at stake. The reason is that the early modern era was a time of state creation—a time when state identities were being formed—and at such times legal considerations are likely to play a different role than at times when state identities can be taken for granted. Although national interests may not bow to legal requirements, legal requirements are crucial when it comes to creating and sustaining a national identity. There are, to wit, two features of the law which contribute to this end: the law gives substantive content to the actions that political entities perform, but in addition, it also provides a standard by which political entities may be recognized as entities of a certain kind.

To talk about law, recognition, and identity formation in the same breath is of

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course to invoke a very Hegelian vocabulary. In fact, and as I will argue, G. W. F. Hegel’s interpretation of international law can help us to throw new analytical light not only on the legal discussions which took place in the early modern era, but also on the ways in which international law may be relevant in our contemporary world.

The Swedish Council debates

On 26 June 1630, Swedish troops under the command of King Gustav II Adolf landed in Usedom on the northern coast of Germany.¹ This was the beginning of a military campaign which in several respects was nothing short of extraordinary. A poor, sparsely populated, country on Europe’s northern fringe had decided to take up arms against the Habsburg emperor of the Holy Roman Empire, the mightiest ruler on the Continent.² The subsequent war—the ‘Thirty Years War’ to the historians—was, however, to bring both successes and failures to the Swedes. After the Swedish victory at the battle of Breitenfeld on 7 September 1631, Gustav Adolf was greeted as the saviour of the Protestant religion and as the new head of the German corpus evangelicorum. Only a year later, however, he was found dead on the battlefield of Lützen, Saxony. And although Sweden continued to maintain a presence in Germany after the death of the king, Swedish troops increasingly had to rely on subsidies from Cardinal Richelieu’s government in France. Despite this somewhat mixed record, when peace was finally concluded in 1648, Sweden was nevertheless recognized as a fully fledged imperial power and as a major player in European politics.

Even though the Swedish intervention may have been a spectacular enterprise, it was, however, by no means a rash or an unpredemitted action. Before they finally made up their minds, the Swedish leaders had discussed the question of the ‘German war’ for a number of years and in a number of different fora. Already in the early 1620s, Gustav Adolf had warned his counymen of the impending danger posed by the Catholic forces which were advancing towards the Baltic sea coast. And from the beginning of 1628 he held repeated and lengthy consultations on the topic with the members of the Council of the Realm, with the estates of the Diet, as well as with his personal advisers. Much of this material still remains in the archives and it provides us with a very good view of the deliberations undertaken by the Swedish decision makers.³

A particularly striking feature of the debates held in the King’s Council is the

¹ In this article I will follow recent writers who have refrained from latinizing the king’s name, i.e. I will prefer ‘Gustav Adolf’ to ‘Gustavus Adolphus’. For a full explanation of the Swedish intervention, see Erik Ringmar, Words that Govern Men: A Narratological Explanation of the Swedish Intervention into the Thirty Years War (under review).
³ In print as: Arkiv till upplysning om svenska krigens och krigsrättningsarnes historia 1A (Stockholm, 1854); Svenska Riksrådets Protokoll, vol. 1, edited by N. A. Kullberg (Stockholm, 1878); Konung Gustav II Adolfs tal och skrifter, edited by C. Hallendorff (Stockholm, 1901). An English translation of some of the relevant material can be found in Michael Roberts (ed.), Sweden as a Great Power, 1611–1697: Government, Society, Foreign Policy. (London, 1967).
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repeated attention given to matters of international law. This body of law was of course relatively new at the time and a field of scholarship which attracted much attention. Beginning with Francisco de Vitoria in 1539 a number of thinkers and philosophers had expanded at great lengths on how relations between states were to be regulated, and a particular emphasis was put on the question of how to regulate war. The legal scholars stipulated conditions under which wars were to be considered as just and unjust; put forth the circumstances under which interventions were permitted and prohibited; and discussed how neutrals should relate to warring parties. The most influential pronouncement on these issues was provided by Hugo Grotius in his treatise De iure belli ac pacis, The Law of War and Peace, published in 1625.4

As the protocols of the Council meetings clearly demonstrate, the Swedish leaders attached great importance to these stipulations. The Swedes were very concerned that the action they contemplated would, as the king put it, make them able to ‘not merely fight it [the war] with a clear conscience, but also to justify it before the whole world’.5 Do we really have sufficient reasons for our war to be called just?, they asked themselves. Do we have the right to support the Protestant principalities in Germany against the Habsburg emperor, their lawful ruler? Should we, as the law stipulates, dispatch a peace mission to Vienna, or should we go to war without any prior negotiations? At meeting after meeting from the autumn of 1628 until the time of the intervention itself, arguments pro as well as contra each position were adduced and carefully considered and weighed against each other. Often these debates were held in Latin rather than in Swedish in order to allow easy references both to ancient and to contemporary legal authorities.6

The extent of this preoccupation is also attested to by the fact that the king by all appearances was an avid reader of legal treaties. According to reports, he spent some time each day studying ancient and modern authorities on the subject, and especially ‘the work of Grotius, and in particular his tractatus iure belli ac pacis’. The king always carried his Grotius with him—he was said to rest his head on the book at night, to keep it in his saddle bag during the day, and a copy of the work was found in the royal tent after his death.7

To later generations of historians this attention to matters of international law has of course been somewhat perplexing. We are not used to legal arguments being foremost in a politician’s mind and especially not foremost on the mind of a

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politician who is preparing for a foreign war. Why, then, did the Swedish leaders spend such a lot of time on these issues? There are, we could say, two different explanations of this fact.\footnote{For a summary of the historiographical debates on the Swedish intervention, see Sverker Oredsson, \textit{Gustav Adolf, Sverige och trettioåriga kriget: historieskrivning och kult} (Lund, 1992), as well as Erik Ringmar, 'Historical Writing and Rewriting: Gustav II Adolf, the French Revolution and the Historians', \textit{Scandinavian Journal of History}, 18, no. 4 (1993).} To nationalistic Swedish historians, who have seen Gustav Adolf as a defender of his country and of his Protestant faith, the attention paid to international law demonstrated the king's great concern for the stipulations of morality. The Swedes were not only good Evangelical Christians, it is pointed out, but also staunch defenders of the law.\footnote{Compare the work of historians like C. T. Odhner, Martin Weibull and Ludvig Stavenow, discussed in Oredsson, \textit{Gustav Adolf}, pp. 97–114.} Other historians—often of a radical bent or of a Catholic background—have, however, been far less impressed. To this latter group of scholars these legal arguments were nothing but the rhetorical moves of cynical Machiavellians.\footnote{See e.g. Curt Weibull, 'Gustav II Adolf', \textit{Scandia}, 6 (1933); Axel Strindberg [1937], \textit{Bondenöd och stormaktsdröm} (Stockholm, 1988), pp. 17–18.} The pretty words were designed to conceal the reality of military imperialism abroad and political repression at home. The intervention of 1630 was propelled by economic and social causes, and moral considerations only served to give imperialism an idealistic face.

Regardless of which of these two groups of historians we decide to trust, however, a puzzle still remains. What neither the sympathetic nor the cynical interpretation can explain is why matters of international law occupied \textit{such a prominent place} in the Swedish discussions. Why did legal arguments reappear repeatedly in one Council meeting after another during the course of more than one and a half years? And why were they a central topic, not of public declarations delivered on solemn occasions, but of top-secret discussions held between the king and his closest advisers?

What would a political scientist say regarding this question? How would a scholar of international politics assess the Swedish Council debates? The most readily available answer to these questions is likely to disappoint us. The discussions taking place among contemporary scholars of international politics have closely mirrored those taking place among historians. What historians have talked about in terms of the dichotomy between 'moralism' and 'cynicism', political scientists have talked about in terms of 'idealism' and 'realism'. While the idealists have regarded law as the very foundation on which world peace is to be built, the realists have pointed out that it is power, not law, which governs the world. Like all dichotomies, the realism/idealism split leaves little room for nuance and subtlety. If it is understood as a distinction between the world as it ought to but cannot be, and the world as it really is and must be, then our only choice is whether to participate in the games of power politics or to place our hopes in illusions. International law, as Hans Morgenthau concluded,

delivers the enforcement of the law to the vicissitudes of the distribution of power between the violator of the law and the victim of the violation. It puts a premium upon the violation of the law as well as upon the enforcement of the law by the strong and, consequently, puts the rights of the weak in jeopardy.\footnote{Hans Morgenthau, \textit{Politics among Nations: The Struggle for Power and Peace} (New York, 1948), p. 229.}
According to Morgenthau, international law is irrelevant since it is utterly decentralized in its legislation, adjudication, and enforcement.\(^\text{12}\)

Yet there are good scientific reasons to be sceptical about this traditional dichotomy. As a number of recent writers have pointed out, it is simply not true that states act as the realists have predicted.\(^\text{13}\) Realism, ironically, is not very realistic. Norms, rules and legal considerations do, for example, have much more of an independent role than traditional scholars have granted.\(^\text{14}\) Inter-state politics might perhaps best be described not as a pure anarchical realm, but rather as a social system, or as an 'anarchical society'.\(^\text{15}\) In fact this societal view of world politics is often associated with the name of Hugo Grotius. As Hedley Bull explains, Grotius was the first writer to point out that states simultaneously are sovereign and independent of each other and yet also parts of the greater society of all of mankind, the \emph{magna communitas generis}.\(^\text{16}\)

The fact that Grotius’ name pops up first in connection with a puzzle pertaining to political debates carried out in early seventeenth century Sweden, and next as a way to improve on a traditional, overly rigid, analytical vocabulary, indicates that there might be some kind of a connection between the two issues. Could it be that the Swedes of the early seventeenth century read Grotius for the same reason that we might read him today—because of his emphasis on the social character of inter-state relations? This is of course an intriguing question, yet a question which is difficult to answer in a straightforward fashion. To a contemporary reader, Grotius’ writings will inevitably appear as analytically underdeveloped, even naïve, for the simple reason that most writings on international politics followed upon, rather than preceded, Grotius’ own contribution.\(^\text{17}\) It is, for example, not at all clear how his thought relates to the realism associated with the post-Hobbesian tradition or to the idealism of the post-Kantians.\(^\text{18}\) And hence, as long as we are trying to defend the Grotian view of world politics with the help of arguments drawn from Grotius himself, we are not likely to get very far. The Grotian alternative can all too easily be portrayed as an insignificant elaboration on the realist view or, alternatively, as yet another futile attempt to defend an idealistic ‘ought-to-be’.\(^\text{19}\)

What the Grotian view needs is consequently a more secure philosophical grounding. It needs the support of a writer who was in a position to react both to post-Hobbesian and to post-Kantian thought; someone with a clear notion of why

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a self-interested statesman would ever pay attention to matters of international law. The obvious choice here is Georg Wilhelm Friedrich Hegel, that notorious arch-enemy of constraining, simple-minded dichotomies. Yet Hegel was highly sceptical of international law as it had been understood by Immanuel Kant and the Kantians. In fact, when turning to the topic at the end of the Philosophy of Right he sounded very much like a Cold War realist of the Morgenthauian mould.\(^{20}\) The relation between states, Hegel reminded his readers, is a relation between autonomous entities which make mutually beneficial deals with each other, but which at the same time always are superior to those deals.\(^{21}\)

This hard-line position does of course make Hegel into a somewhat unlikely source of a construction of a defence of the relevance of international law. Yet as we shall see, Hegel’s philosophy of right does contain components, which, when properly assembled, will takes us beyond both moralism and Realpolitik. The trick here hinges on the notion of a ‘right’ and on the fact that the law fulfils more functions than those concerning legislation, adjudication, and enforcement which a realist thinker like Morgenthau emphasized. As Hegel argued, the law is not only a tool for telling right from wrong, but also a tool for determining the class of subjects to whom the law itself applies. The law not only provides a basis for the punishment of transgressors, but it also allows for the constitution of individual identities. The law allows us to give content to our wills and thereby also to our lives, and it allows others to recognize us as persons, or as states, of a particular kind.

**Hegel on recognition**

Hegel’s philosophy of right is in many respects best read as a rejoinder to Immanuel Kant and as a philosophical reaction to the events of the French Revolution. Hegel was characteristically ambiguous in his assessment of Kant. While he regarded Kant’s philosophy as a major achievement, he never failed to point out that this philosophy remained fundamentally incomplete in some crucial aspects. Kant’s great insight, as Hegel would have it, was his rejection of all traditional backings of morality—religion, nature or monarchical decrees—and his attempt to establish morality on the basis of the freedom of human reason. According to Kant, ‘the categorical imperative’ presents a standard of rationality to which human beings must conform if they want to affirm their free will and their autonomy.\(^{22}\) To break this law would be self-defeating since it would constitute a denial of one’s capacity for freedom.

Although Kant’s ethics were thus an important step forward, Hegel was profoundly sceptical of what he regarded as the empty formalism of the Kantian

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\(^{20}\) *'There is no Praetor to judge between states at best there may be an arbitrator or a mediator, and even he exercises his functions contingently only, i.e. in dependence on the particular wills of the disputants.’* G. W. F. Hegel, [1821], *Philosophy of Right*, trans. T. M. Knox (Oxford, 1952), §333, pp. 213–14.


\(^{22}\) The moral law can be understood as the affirmation of an inherent human potential and the guarantee of this potential is to be found in the Kantian formula which stipulates that a person should be treated *'not merely as means* for arbitrary use by this will or that; but . . . be regarded *at the same time as an end.’* Immanuel Kant [1785], *Groundwork of the Metaphysics of Morals*, trans. H. J. Paton (New York, 1964), 428, sect. 46.
system. Kant had attached moral obligations to an abstract self—a ‘pure reason’—divested of all cultural traits and historical or social characteristics. But as Hegel argued, there simply is no such a- or pre-social self to whom rights may be attached, and all attempts to establish a morality on this basis will therefore be self-defeating. There can be no such thing as an abstract free will since ‘to will’ always implies ‘to will something’, and for this reason Kant’s categorical imperative will always remain indeterminate in terms of subjective content. In particular, the categorical imperative will provide little practical or political guidance in times of crisis, and Hegel found proof of this conclusion in what he regarded as the excess of the French revolution. During the reign of the Jacobins, moral self-legislation had given free reign to the arbitrary wills of despotic dictators. For the same reason it was utopian to believe, with Kant, that states ever could join together in a _fœdus pacificum_ and bring about a ‘perpetual peace’. If push came to shove, the primary obligation of each state would always be towards its own welfare and not towards an abstract and universal code. ‘[S]o far as international relations are concerned we can never get beyond an “ought.”’

Hegel labelled the abstract, empty, Kantian notion of ethics ‘Moralitât’ and contrasted it with his own definition of ethics in terms of _Sittlichkeit_. While _Moralitât_ referred to abstract principles and to ought-to-be’s, _Sittlichkeit_ referred to the existing moral obligations of actual communities. To act in accordance with _Sittlichkeit_ was thus necessarily to follow the given social code and to perpetuate the already existing. Naturally this would seem to make ethics into an inherently conservative enterprise, but before we reach any such conclusion we should take a closer look at the relation between ethics and Hegel’s own definition of freedom and its connection to the development of personal identities.

As we said, Hegel praised Kant for his break with traditional sources of morality and for his attempt to establish ethics on the basis of freedom and reason, while remaining profoundly sceptical of the empty formalism that Kant’s solution implied. If freedom was to be protected it would consequently have to be placed on a different, and more secure, foundation than that of Kantian self-legislative reason.

What distinguishes human beings from animals, Hegel began this alternative deduction, and what gives us freedom from determination through nature, is the fact that we can form _second-order desires_. We can want to want things and desire to desire. While animals only seek comfort and safety and the most immediate satisfaction of their urges, human beings can organize their desires and thereby also their selves. But as Hegel repeatedly stressed, one person’s organization of his or her self can only be carried out in interaction with others. We cannot be whatever

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23 This section draws on Steven Smith, _Hegel's Critique of Liberalism: Rights in Context_ (Chicago, 1989), pp. 103–31.
we want to be, but only somebody as we are recognized by people around us.\textsuperscript{30} The desire to be recognized is consequently not just another desire, but instead the core human desire, central to our sense of who we are. Only as recognized by others do we fully come to exist as persons since it only is as recognized that we can separate ourselves from the nature that surrounds us as well as from our natural desires.

But Hegel also stressed that recognition by others is never immediately forthcoming, but instead something for which individuals would have to fight. In the chapter on ‘Lordship and Bondage’ in the Phenomenology of Spirit he imagined a situation where two individuals were facing each other, neither of them recognized the other.\textsuperscript{31} Between them a struggle for recognition ensued through which one of them came to be recognized as superior—both by himself and by the other—while the other came to be regarded as inferior. The ‘master’ gained recognition from the ‘slave’ by ‘going all the way’ and risking his own life, while the slave, cautiously, preferred to save his life and to accept his inferior position.\textsuperscript{32}

As Hegel went on to say, however, the master was unlikely to be satisfied with his victory for very long. The slave was only a slave after all, and the recognition he granted was simply not enough. What the master craved most of all was not just recognition, but recognition from someone equal to himself; respect granted by someone he himself in turn respected. The difference between the master and the slave had to be overcome, and the mechanism through which this was to take place was the slave’s capacity to develop himself through the force of his own labour. As Hegel argued, the slave could educate himself and become ‘someone’ as he worked on his capacities and on the world around him. In this way recognition and personal identity came to be seen as achievements which only could take place in the course of time. Hegel envisioned social relations as becoming increasingly equal as more and more individuals freed themselves both from the determination by nature and from the subjugation imposed upon them by others.

A society where each individual is recognized by all others and treated with respect is what Hegel referred to as an ‘ethical community’. In such a community the law is not a conservative force, but instead the guarantee that a person is treated decently and granted the right to develop his or her personality and individual capacities. A ‘right’ according to Hegel is fundamentally a right to recognition, and as such it is intrinsically related to the development of a personality and to freedom from natural determination.\textsuperscript{33} To Hegel, the law is thus not, as Kant would have it, a guarantee of a pre-constituted, underlying individuality, but instead something which human beings merit as a result of the struggle for recognition in which they engage. Only once a person is constituted as an autonomous self can rights properly be attached to her. Law acknowledges this

\textsuperscript{30} As Hegel famously put it: ‘Self-Consciousness exists in and for itself when and by the fact that, it so exists for another; that is to say, it exists only in being acknowledged.’ G. W. F. Hegel, [1807], Phenomenology of Spirit, translated by A. V. Miller (Oxford, 1977), §178, p. 111.


achievement and establishes a structure through which it can be secured and sustained. It is a fundamental tenet of Hegel's thought that such a community would have to be coextensive with the state; only in the state was a true ethical life possible.

If we compare Hegel's notion of the law with Kant's, or with the notions presupposed by both contemporary idealists and realists, we consequently find that Hegel points to two additional functions besides those concerning legislation, adjudication, and enforcement. The law is first of all a structure of meaning with the help of which content can be attached to individual wills and thereby also to individual lives. Secondly, the law is a structure of rules through which people can be classified, recognized, and in this way identified as persons of a certain kind.

If we focus on the first of these two functions, the law will come to have very much the same status as any other rule, norm, or custom which exists in a society. We use the law as we use other rules that our society provides in order to give meaning to our lives; we submit ourselves to a certain way of life, and as a result we come to see ourselves as persons of a certain kind. Here the law is similar to what George Herbert Mead referred to as the point of view of the 'generalized other'. Only in so far as each individual takes the attitudes of all other members of her community into account will she be able to develop a complete self. By taking a generalized point of view, she is able to 'step out of her own shoes', as it were, and see herself as the others would. To abide by the law is thus not primarily a matter of 'being good', but rather a matter of submitting oneself to a rule which makes it possible 'to be' in the first place. Here abstract and universal rules will be irrelevant and empty since there is no such thing as an abstract and universal person. A Kantian self is a no-body rather than a some-body.

If we focus on the second of these two functions, the law can be understood as a system through which a person can be given recognition by others. Rules provide standards by which actions can be judged and assessed, and thereby also standards through which we can draw conclusions regarding the persons who perform them. The standard, in other words, is used not only to judge actions, but also to identify the actors to whom the standard itself applies. On the basis of this argument we could perhaps hypothesize that a person who is insecure regarding her own identity—say, a new member of club, a profession, or any other social system—is likely to be a particularly faithful rule-follower. By following the rules in their minutest details such a person is making demands on the people around her to recognize her as a legitimate member of their group.

Hegel on international law

Having established these general points we are now in a position to return to

34 As Hegel put it: 'In speaking of Right [Recht] . . . we mean not merely what is generally understood by the word, namely civil law, but also morality, ethical life, and world history.' Hegel, 1821/1952, addendum to §33, p. 233.
Hegel’s treatment of international law. As we might expect, Hegel’s insistence that the state is the only entity in which a sittlich life can be lived determined his views also of the relations obtaining between states. Since the world could never become an ethical community, the inter-state law could never play the role it did in relations between individuals. Still this did not mean that Hegel was indifferent to the nature of inter-state relations. In fact, it was a crucial part of his argument that the state is not only a product of the consent given to it by its citizens, but also a political subject, or a person, in its own right. Also the state had to be recognized before it could come into existence.

This conclusion may perhaps seem uncalled-for. Why, we may ask, would states have to become ‘selves’ or ‘persons’? Hegel’s answer was that this conclusion followed from the notion of sovereignty. To play a role in the historical and philosophical development of mankind, the state had to be sovereign both in relation to other states and in relation to its own inhabitants. It was only if the state had a right to defend itself against foreign enemies that its ethical life could be protected, and it was only as independent from civil society that it could constitute a sphere where individuals could be turned into citizens and ethical, non-self-serving, beings. This sovereignty could only come to be established to the extent that the state was recognized by other states as well as by the state’s own inhabitants. Only as recognized would the state be sovereign and only as such would it be free and a person in its own right.

But how was this recognition to be gained? Here, again, Hegel stressed the role of conflict, or more precisely, of war. As far as the internal relationship between the state and its inhabitants was concerned it was war that brought out the civic virtues of the bourgeois class. Only at a time of great danger could the bourgeoisie be convinced to leave their petty private pursuits and sacrifice themselves for the collective. While prolonged peace gave rise to the illusion that the state existed merely for the sake of private interests, a war united men for the purpose of common ideals. Yet a state had to be recognized not only by its inhabitants, but also by other states, and also in the external relationship between one state and another was war the mechanism through which recognition was granted. The ‘master and slave dialectics’ repeated itself in inter-state relations. Recognition is never immediately forthcoming, Hegel repeated, and if a collection of people is to gain it, they must first fight for it. As proof of this conclusion, Hegel pointed to how the young French Republic had been disrespected and humiliated by the monarchical regimes which surrounded it, but how Napoleon—at the head of the

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36 Hegel’s views on inter-state affairs are discussed by, among others, Shlomo Avineri, ‘The Problem of War in Hegel’s Thought’, Journal of the History of Ideas, 22, no. 4 (1961); Steven Smith, ‘Hegel’s Views on War, the State and International Relations’, American Political Science Review, 77 (1983).
38 The nation-state is mind in its substantive rationality and immediate actuality and is therefore the absolute power on earth. It follows that every state is sovereign and autonomous against its neighbours. It is entitled in the first place and without qualifications to be sovereign from their point of view, i.e. to be recognized by them as sovereign.’ Hegel, 1821/1952, §331, p. 212.
39 Smith, Hegel’s Critique, p. 628.
40 ‘A state is as little an actual individual without relations to other states as an individual is actually a person without rapport with other persons.’ Hegel, 1821/1952, §331, pp. 212–213. If states, in the plural, ceased to exist, as Avineri comments, there could not, by definition, remain a state in the singular. Avineri, ‘Problem of War’, pp. 468–69.
French army—had forced them to grant the country the recognition they had failed to grant freely.

When Napoleon said before the Peace of Campoformio [1797, the treaty which concluded Napoleon’s first Italian campaign] that the French Republic needs recognition as little as the sun requires it, what his words implied was simply the strength which carries with it, without any verbal expression, the guarantee or recognition.41

But just as in relations between individuals, perpetual war between states was not the end of the story. Also in world politics Hegel envisioned that relations of mutual respect could be developed. The world could never become a full-fledged ethical community to be sure, but it could become a kind of ‘quasi-community’ of states that mutually recognized each other’s sovereignty. Perhaps we could call this the ‘mature phase’ of world politics to which states would gain admission once they had established domestic ethical communities of their own and once their external struggles for recognition had abated. Among these states, conflict would still remain a possibility, but Hegel believed wars would become increasingly rare and increasingly humane. No doubt the Congress of Vienna, 1815, and the European Concert system which this settlement inaugurated, were the empirical points of departure of this philosophical argument.42 As Hegel pointed out:

The European peoples form a family in accordance with the universal principle underlying their legal codes, their customs, and their civilization. This principle has modified their international conduct . . . in a state of affairs otherwise dominated by the mutual infliction of evils.43

In this mature, post bellum, quasi-community, there was indeed a role to play for international law. International law, that is, understood not as an aprioristic morality, but as inter-state custom.44 The kind of international law which mattered consisted of the practices developed between states who freely granted each other recognition. On this basis, codes of conduct could be established which remained valid also in the case of conflict.

The fact that states reciprocally recognize each other as states remain even in war—the state of affairs when rights disappear and force and chance hold sway—a bond wherein each counts to the rest as something absolute. Hence in war, war itself is characterized as something which ought to pass away.45

For Hegel, in other words, international law and war are not as much contradictory moments—‘morality’ and its negation—as complementary processes which presuppose each other. A state begins by fighting for recognition, and once this recognition is granted it may join the ranks of states that mutually recognize each other, and only as such is it a legitimate partner in contracts and in mutually advantageous deals.

After this summary of Hegel’s argument, let us return to the puzzle with which

41 Hegel, 1821/1952, addendum to §331, p. 297.
42 On the European Concert in the early nineteenth century, see e.g. Ian Clark, The Hierarchy of States: Reform and Resistance in the International Order (Cambridge, 1989), pp. 93–130.
43 Hegel, 1821/1952, addendum to §339, p. 297.
we began. Why, we asked, were the Swedish leaders responsible for the intervention of 1630 so peculiarly preoccupied with matters of international law?

**The Swedish discussions**

Perhaps we should begin by emphasizing the magnitude of the transformations which took place as the world of the Middle Ages was replaced by that of the Renaissance. In political terms, the most important of these changes was the process through which the *state* came to be established as the only legitimate political unit, and through which a *system* of interacting states was formed which had norms and rules which were exclusively its own.

The world of the Middle Ages had been both local and universal in scope. While most people had lived and worked in traditional, local, communities governed by feudal lords, the religious, intellectual, and political world had been universal in spirit and often enough also in fact. All of this changed, however, in the course of the sixteenth and seventeenth centuries as the institution of the state was wedged in-between the local and the universal levels, and as it appropriated—and monopolized—the functions previously carried out elsewhere. As a result, economies were increasingly organized on a *state* scale; the unitary body of Christianity was divided through the Reformation and often also dismembered into *state*-churches; intellectual pursuits increasingly came to be carried out in the vernacular rather than in Latin. According to the new Renaissance doctrine, the state was sovereign, acknowledging no authority above it and none below.\(^{46}\) Much of early modern political thought—from Niccolò Machiavelli and Thomas Hobbes to Cardinal Richelieu and the first mercantiles—can be read as attempts to give legitimacy to the power vested in this new political institution.

The sovereign states also increasingly came to see themselves as interacting in a *system* of other states. This was perhaps most evident in the diplomatic conduct which emerged first in the Italian city-states and later also in the rest of Europe.\(^{47}\) Naturally, one state’s capacity for warfare soon came to be seen in the context of the similar capacities possessed by all other states, and while this made the question of war into a primary political concern, it also turned it into an intellectual problem. While it had been obvious in the Middle Ages where justice lay in a conflict between a Christian and a heathen ruler, it was not as easily determined among two Christian princes that fought for the just cause. International law as it was developed in the course of the sixteenth century sought to address precisely this question.

It is important to notice, however, that the problem of war not only concerned questions of how responsibilities were to be allocated, but also questions of how identities should be defined. International law was never designed to end war, but instead to designate the *class of actors who legitimately could fight wars*. In this connection there were two lines that had to be drawn: one between the state

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and various sub-state actors—feudal lords, for example, or independent peasant communities—and the other between the state and super-state institutions—notably the Catholic Church and the post-Roman Empire. By making the prince its legal subject, this new body of law simultaneously denied the same status to both supra- and sub-state actors. As an instrument for buttressing the status of the state, international law thus served exactly the same purpose as the arguments presented by political philosophers such as Machiavelli and Hobbes.48

By adhering to the rules of international law, a state did thus not only do what was wrong or right, but, more importantly, it gave content to its life as a social being in a world of other states, and it made demands on other states to recognize it in accordance with these rules. By adhering to the precepts of international law, each state defined itself as a legitimate member of the system of states and demanded recognition as such from those states that already were legitimate members of it. This is the force of Grotius’ argument in De iure belli ac pacis that a state must adhere to international law just as a citizen must adhere to the laws of her own society.

For just as the national, who violates the law of his country in order to obtain an immediate advantage, breaks down that by which the advantages of himself and his posterity are for all future time assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace.49

Grotius’ position here should not be read as an ide?listic exhortation to behave ‘morally’, but rather as a piece of factual information regarding the requirements of any process of identity formation. Only within a viable international social order can a state establish itself as a legitimate actor; whatever a state does serves to maintain, or disrupt, that order. If states are to constitute themselves as independent, sovereign entities, the law must be upheld.

If we return to the Swedish intervention of 1630 with these considerations in mind it becomes possible to provide an alternative interpretation of why the Swedish decision makers spent such a lot of time on legal discussions. To wit, the king and his advisers discussed international law neither because they were particularly ‘moralistic’ nor primarily because they sought ‘legal justifications’ for their actions, but instead because they sought recognition for their country as a legitimate member of the emerging system of states. Only by playing by the rules could they be identified as the kind of actor to whom these rules applied. But as we shall see, these attempts were ultimately all in vain, and as it became obvious that recognition would not be granted freely, the Swedish leaders decided to gain it by military means.

In order to drive home this argument we should begin by noticing the ambiguous position which early seventeenth-century Sweden occupied in relation to its neighbours. The country was, at best, a marginal member of the European inter-state system. In fact, Sweden’s diplomatic isolation and the lack of respect granted to the country and its ruler were the main themes of Swedish foreign policy discussions

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49 Grotius, 1625, Prolegomena, §8.
throughout the sixteenth and early seventeenth centuries. ‘Why and from what cause is it’, as Gustav Adolf asked the Diet in 1625, ‘that our realm and fatherland by so many and so often is attacked and sought after?’ The only reason I can find, he said,

‘is that we cannot carry out our enterprises with the same strength and power as other nations and peoples, and this causes disrespect and contempt from our neighbours, so that they argue that we can count for very little and become ready to suppress and dominate us.’

In order to give proof of this ‘disrespect’ and ‘contempt’ the insecure Swedish leaders pointed to a number of different controversies and ‘affairs’. One such affair concerned the question of the ‘Three Crowns’. During the Middle Ages, Denmark, Norway and Sweden had been united in a triple monarchy with three crowns as its insignia. When the Swedes broke away from this alliance in the 1520s, the Swedish leaders—much to the dismay of the Danes—continued using the crowns as a symbol also of their sovereign state. By using its emblem the Swedes naturally sought to lay claim to all the legitimacy that the Scandinavian monarchy had acquired throughout the years. As late as the early 1600s the affair still had not been settled and as a result the Danes stubbornly refused to recognize the Swedish king as a fully legitimate ruler.

Swedish dynastic struggles also added to these problems. Family feuds within the ruling royal house and successive coups d'état in 1523, 1570 and 1599 had not only created dissension within the country, but also suspicion abroad. When Gustav II Adolf ascended to the throne in 1611 it was simply not very clear with what right he governed. This was especially the case since the former king, Sigismund, who was also king of Poland, kept on demanding the return of his Swedish throne. As a Catholic he wielded considerable influence with the Habsburg emperor as well as with other Catholic rulers, and many princes on the Continent still regarded Sigismund, not Gustav Adolf, as the legitimate Swedish king. A clear indication of this fact was provided by the way in which the king was addressed. When peace negotiations began with Poland in 1629, they immediately stalled since the Poles refused to negotiate with someone who referred to himself as ‘Gustav II Adolf, King of Sweden.’ Letters which arrived in Stockholm were addressed not to the king, but to ‘Gustavus the Swede’ or to ‘the Duke of Finland.’

In addition, diplomatic and military relations between Sweden and its neighbours continued to be strained. Even those countries that were supposed to be its allies showed hesitation when dealing with Sweden and its ruler. Despite vigorous efforts, the country remained diplomatically isolated and all Swedish proposals for a military alliance of Protestant states were rejected. Although they in principle liked the idea of an anti-Catholic front, Holland and England nevertheless refused to grant the Swedish king the role of commander of such a joint—and potentially very powerful—Evangelical force.

50 A number of examples are provided by Wilhelm Tham, Den svenska utrikespolitikens historia: 1:2, 1560–1648 (Stockholm, 1960), pp. 101–202.
51 Gustav Adolf's Address to the Opening of the Diet, March 10, 1625, Gustaf Adolfs skrifter, p. 213.
52 In fact the issue of the Three Crowns was cited as a causus belli for the Nordic Seven Years War in the 1560s. See Tham, 1960, pp. 35–36, 90.
54 Ahnlund, Gustav Adolf, p. 318.
What, then, were the Swedes to do in this situation? How could they break out of their isolation and gain recognition for their country and their king? One option was to seek the support of the rules that had been developed in order to regulate inter-state conduct. By following the rules of international law, the king and his advisers saw their country as a legitimate member of the inter-state system and asked other princes to recognize it as such. Sweden cared about international law, neither because its elites were particularly moralistic, nor because they were particularly cynical, but because they sought recognition as a legitimate state among others.

These attempts failed, however, abysmally. In fact, it turned out to be impossible for a non-recognized country such as Sweden to rely on the rules which governed relations between already recognized ones. Since the Swedes occupied an inferior position vis-à-vis their neighbours, the established rules could never be used to their advantage. This realization came, for example, to colour all the Council’s discussions regarding whether or not to send a peace mission to the emperor in Vienna. As international law would have it, all peaceful means should first be exhausted before a country embarked upon war, and while the Swedish leaders acknowledged this fact in a number of different Council meetings, they nevertheless unanimously concluded that it would be a sign of weakness to dispatch a delegation. Our ‘securitas et reputatio’ will not allow it, the king concluded; it would appear as though we were ‘begging for the peace’.

Indeed to send a delegation would simply be to risk being humiliated. What if the Swedes were not given an audience once they arrived? Or what if they were admitted, but treated with insults? And what would happen if they, for example, were handed letters of accreditation made out to someone else but not to the representatives of ‘Gustav II Adolf, King of Sweden’?

If we take a Hegelian view of these discussions, none of this is of course surprising. An individual or a state who is not recognized by others cannot rely on their law in order to gain recognition. What an individual or a state first must do is fight; recognition can only be granted through war. And this was of course also the conclusion which eventually was reached by the Swedish leaders. ‘If we do not go across,’ as the Council concluded in the fall of 1629, ‘we will lose all reputation and the blessing of God.’ If we want to come to a settlement ‘with reputation and honor,’ we must ‘meet him with an army in his own land.’

The relevance of international law

What is the relevance of international law? Are the idealists justified in their hopes that international law can contain war and force states to act morally? Are the realists correct in their dismissal of all legalistic reasoning and in their emphasis on the power of power politics? As we know, this issue has traditionally been settled in favour of the realists’ position. If we must choose between the world as it ought to be, but cannot be, and the world as it is, and must be, then both statesmen and

56 On this last fear, see Tham, 1960, pp. 267–268.
57 Minutes of the Council, October 27, 1629, Arkiv, IA, pp. 51, 58.
scholars have been forced to opt for the latter. Yet, as a number of students of international politics recently have pointed out, the very realism of the realists’ position can easily be questioned. States do not always follow the imperatives of power politics, but often also the rules and norms that have developed as a result of their common interaction. Perhaps the world is best described neither in Kantian, idealistic terms, nor in terms of a Hobbesian state of nature, but instead with Grotius and with Hedley Bull as an ‘anarchical society’.

As we have pointed out, however, while this alternative description may be appealing in many respects, it has so far lacked in analytical precision. The Grotian view of world politics has hovered uneasily somewhere between the idealist and the realist positions—all too easily portrayed as an insignificant elaboration on Realpolitik or, alternatively, as yet another attempt to defend an idealistic ought-to-be. Given the imperatives of power politics and the futility of idealism, it has remained unclear precisely why a statesman would be interested in international law in its own right.

My suggestion in this article is that the writings of G. W. F. Hegel can help us answer this question. As Hegel would stress, law provides us not only with a means of adjudicating between right and wrong, but also with a way through which identities can be established, recognized, and developed. The law—understood broadly as a system of rules of conduct—gives content to our wills, and thereby also to our lives, and by our submitting our actions to the stipulations of the law, others can come to recognize us as persons, or states, of a certain kind.

But recognition, as Hegel stressed, is not automatically forthcoming, but instead typically something for which each individual will have to fight. In this way, as far as the state is concerned, international law and recognition will inevitably become closely connected to warfare. As Hegel would have it, individual human beings can be transformed from self-centred bourgeois to full-fledged citizens only as they risk their lives for the state, and the state can become a legitimate member of the system of states only as it wages war on those states that already belong to it. Although Hegel denied the possibility of the world ever becoming a true ethical community, he did believe that what we called a ‘mature quasi-community’ of states could be formed which comprised states that mutually recognized each other. In this post bellum community, rules and norms could be both established and maintained and mutually advantageous deals agreed upon.

In conclusion, let us briefly consider an important corollary of this Hegelian argument. If international law is relevant at times when identities are established, it follows that the relevance of international law is likely to vary over time. Questions of identity are not always salient, or not always salient to the same degree. We generally believe we know who we are, and when our identities are securely established we do not analyze or worry about them, we simply use them. Yet, as we know, even the most entrenched of identities does eventually break down, and this is of course where the law suddenly becomes relevant. International law, as it was developed in the Renaissance, defined the class of entities who were subject to it, and if you thought of yourself as a member of this class—and if you were to be granted recognition as such—you simply had to take the law seriously.

Does this, then, mean that our discussion has only a historical interest? That international law was relevant in the Renaissance, but that this relevance now is lost? As our Hegelian interpretation makes us see, the answer to these questions should be given in the affirmative to the extent that we believe that identities can be taken for granted, and in the negative to the extent that we believe that this is not the case. As we began by pointing out, most historians and political scientists who have touched upon this issue have settled for the first of the two options. During the course of the last three centuries, the state has become increasingly reified; it has come to be seen as a natural part of a natural world order—as the only legitimate political entity, and as the only arena where political activities can be conducted. Not surprisingly, the role played by international law has gradually been forgotten. Once the state was established as a fully constituted self, legal arguments could easily by dismissed as just so many empty words. The realism/idealism dichotomy was the result of this process of reification and during this century, statesmen, political scientists, historians, as well as everyone else interested in international politics, have been required to stand up and be counted as loyal members of either camp.

What is taken as natural may, however, by de-naturalized, and philosophy is a good tool through which such a denaturalization may be constituted. As our Hegelian interpretation allows us to conclude, questions of identity may be settled in a temporary fashion, yet sooner or later they will inevitably reappear. An identity is a social construct and not a natural feature of a natural world. It is of course precisely this realization which provided Hegel with a unique perspective on relations between states, and it is this fact which provides us with the ultimate rationale for the Hegelian interpretation we have undertaken. Hegel's time, just like that of Grotius, was a time in which taken-for-granted identities were being undermined and new identities created. As the world of the anciens régimes was breaking down, people suddenly started worrying about what it meant to be a citizen in relation to the state, but also what it meant to be a member of a state in relation to other states. Thus, if Grotius' time was a time when the state was established, Hegel's time was a time when the state was filled with a radically new content—with citizens who sought to fulfill 'national destinies.' While Grotius sought a philosophical justification for sovereignty, Hegel sought a philosophical justification for Napoleon and for the revolutionary French republic. Both of them were aware that new identities needed support, and both of them in their own way—but Hegel with more obvious philosophical sophistication—pointed to international law as a means through which such support could be gained.

Where then do we stand today? This question is of course the topic of much contemporary—and very heated—debate. Is the state 'dead'? Is it going to die? Or are we on the contrary about to witness a neo-statist revival? The wisest thing to do as far as this particular issue is concerned is no doubt to defer judgement. Let us note in conclusion, however, that the mere fact that the issue arises means that identities no longer can be taken for granted quite in the same way that they used to be. Since this is the case, we have a good prima facie reason to try to transcend our old, constraining, vocabularies and to investigate precisely why and how international law may also be relevant in today's world.