

# Her proper name: a revisionist account of international law

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The Treaty of Westphalia (the Treaty) is a collective term for two peace treaties—the *Instrumentum Pacis Monasteriense* and the *Instrumentum Pacis Osnabrugense*—that were signed in the Catholic city of Münster and the Lutheran city of Osnabrück (both in Westphalia, Germany) on the 24 October 1648. These treaties marked the closure of the Thirty Years' War—a bloody conflict between Catholics and Protestants (carried out in its later stages between the rival dynasties of Bourbon and Habsburg) fought across large swathes of Europe. There were an estimated three hundred representatives from around the region present at the signing of the treaties, with the notable exceptions of those from Russia, England, Turkey and of the Pope. The two treaties were signed on the same day: the one in Osnabrück was signed by Sweden and the Holy Roman Empire, and the other, the Franco-Imperial Treaty of Münster, was signed by France and the Holy Roman Empire.

The legacy of the Treaty has been far-reaching, with references still made today to the 'Westphalian paradigm'<sup>1</sup> and to 'post-Westphalian sovereignty'.<sup>2</sup> While the Treaty was by no means the sole catalyst for the eventual universalisation of the nation-state form, it nonetheless presented a significant claim by its princely signatories to jurisdictional independence from the Roman Catholic Church. It thus marks, if not a constitutive moment, at least a founding myth in the story of international law's emergence.

At the time the Treaty was signed there were a significant number of politically active women in Germany. Some were Princess-Abbesses who had the right to collect taxes and tolls from their convent estates, and who held

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1 MT Franca Filho, 'Westphalia: a Paradigm? A Dialogue between Law, Art and Philosophy of Science' 8 *German Law Journal* (2007) 955.

2 Ibid 974: '[I]t is somewhat controversial to talk about a "Westphalian revolution", in the sense commonly attributed to the term "revolution". The non-revolutionary character... of the Westphalian paradigm, however, does not serve to detract any significance from it'.

juridical rights, recognising no ecclesiastic superior save the Pope. Others included powerful Regent Dowagers—figures such as Juliane von Hessen of Ostfriesland and Sibylle Christine von Anhalt-Dessau of Hanau-Münzenberg, who governed land and negotiated truces.<sup>3</sup> Despite their visibility in the public domain, these women ruled in the name of men (the Pope, in the case of the Princess-Abbesses; their underage sons, in the case of the Regent Dowagers). Their power was, therefore, limited in significant ways (for example, they could not pass on title to their daughters), and was also unusual in that women outside of a small feudal ruling class would not have had access to any such political influence. Accounts of women both within and outside of this ruling class are rarely, if ever, included in modern international law scholarship. I have written the following response to this absence of a feminine narrative. It is an imagined account, in the voice of a woman, Maria von Helfenstein, who lived during the Thirty Years' War. The poem is anachronistic in that the theory I use to critique an emerging discourse of sovereignty based on ideas of free trade and masculine sociality is modern.<sup>4</sup> I have tried to capture a sense of the time in which Maria lived by using English spelling conventions from the mid-seventeenth century, and I rely on her voice of undomesticated anger to carry through a concern that is as transhistorical as it is transdisciplinary.

*[Münster, 24 October 1648]*

*Lady Landgravine, they call me. Madame the Landgravine.*

*They, numbering precisely hundreds. I, numbering more than one, Maria to my mother: born of Helfenstein, of Wernberg, of Leuchtenberg, of a hundred million matryoshkan names. They, men representing men with their Amities and Honours: Princes, Heirs, Successors, say: 'tis done.*

*'Tis done, pass'd and conclud'd, one sober Münster day they call, the 24th Day of October. Done a short day, for Westphalian Octobers are quick pass'd by the Sunne. A long negotiation with no beginning and at whose end there were fewer Men.*

*A drop of wax to seal a treaty. Red-spott'd sheets to guarantee, a Universal Peace.*

*The year is 1648. They, numbering precisely hundreds, are borne of these sheets.*

3 Thanks go to Martin KI Christensen for this information, collated with the biographies of other women who have held positions of power in the public sphere, on his website at <http://www.guide2womenleaders.com> (last accessed 3 January 2014).

4 Among others, I am indebted to the work of Luce Irigaray, Adriana Cavarero, Julia Kristeva, Toril Moi, Elizabeth Grosz, Judith Grbich and Anne Orford.

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*Crouching, they were crouching. Calling to shadows cast by fire, upon the wall of a secret cave. That day they crawl'd through a narrow passage, up toward an October Sunne. Light, they thought, would show them Knowledge. Thirty years of hungry war, ended: so, it was done.*

*Will there be Mourning? No, no.*

*They can't turn back but call it dead, and seal the entrance with a stone. 'The body', they say, 'the ancestor and our saviour, lies bury'd there'. Bury'd in an unconscious place, the body with a Demonick face. A dream, a cave, created by they who know. Or invent a dream to be, and have been, to bear witness to it. I be the opening, the tomb or the mouth through which they crawl out.*

*Will there be Mourning? No, no. Oblivion, in perpetuum: through Amnesty or Pardon. They pardon and grant amnesty to forget this sad invention. They parasites, they treaty, they human.*

*Not even a shroud covers the ground cast open*

*They devour the sound of formless cries*

*Security found in sacrifice*

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*Their Security has a neutral taste. A pharmakon ingest'd to Forget. Neutral, nothing, mouth-melting expiation for flesh-eating; tasting, wine once the colour of a woman's desire. An Outrageous Desire that drew the time between life and death, now reformed and shew'd as Property, which alone will save Manne:*

*Vassals; Subjects; People; Towns; Woods, Gold and Rivers shall, without reserve, belong to the most Christian King. Belonging, without Reservation, Hostag'd to a Christian crown. A Sovereign Crown to Guarantee, Unconditional Life. For this, Words, Writings, Outrageous Actions, are bury'd in Oblivion.*

*Such oblivion or courtly love is called Forgiveness, among Men.*

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*Family Contracts must be observed; conserv'd and maintain'd entire. Men and the children of men will make their liquid Empire Form a good and Faithfull Neighbourhood, of Armies, Friends, Guests and Strangers. These are the Hosts who settle their debt by selling my body-pieces for the benefit of Peace.*

*Body-pieces beaten into golden Angels are stamp'd with Sovereign faces.  
With these metal memories of places we shall have full power to go and  
come, to trade and return, with Liberty of Commerce and secure Passages.*

*To go, and come. To trade, and come home.*

*To go without ever risking losing home,*

*for the law of the same*

*be guarante'd by property or its Proper Name.*

*In the Sovereign's likeness to Human lies a fiction within a fiction. The  
body dieth but the figure survives through the state circulation of labour  
and wives, staying the spectres of wolves, Fathers and paper Gods.*

*Let us note, however: passage secur'd is conditional, tho' they declare it  
unconditional.*

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*Burial; sacrifice; consumption, exchange: rituals to protect against  
perpetual Silence. With civilis'd speech they cry out their laws who they  
imagine to echo 'gainst boundary Walls: those that enclose what they call,  
their Territories.*

*Their full Jurisdiction is authoris'd force: the power to kill within  
boundary walls. The architecture borne by this October archi-text, now  
appears and from here it shall never be alledg'd, allow'd or admitted,  
that:*

*Any Law, Decrees, Contracts, Privileges, Mandates, Oaths, Indulgences,  
Judgments, Appeals, Rescripts, Edicts; Commissions, Inhibitions,  
Suspensions, Adjudications, Capitulations, Protestations,  
Contradictions, Transactions, Renunciations—Any Concordats with the  
Popes, Dispensations, Absolutions or any other Exceptions*

*shall take place*

*against*

*this Contention.*

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*It may be done, but Pope the most Innocent X doth retort that the treaty  
be null, void, invalid and unjust. Damnable! he calls it, reprobate, inane,  
empty of meaning and effect for all time. Not for my security condemns he  
the treaty but by reason of a more heinous crime.*

*For you see, the ink-tongue of Manne cleaves off a Perpetual, but Human, Time.*

*Natural law and Natural time; Divine law, Divine time. He stakes a Third, call it a Westphalian dream. He is pushed, or leaps. Air strokes wings ripp'd from the bodies of peace; he soars! Drip drip too near already to the sunne, drip drip. Reddn'd wax and tears claw down toward an Icarian Sea.*

*He be a Prosthetick Machine, this flight, this dream: a mask that mimics and reproduces the living. Not breathing, this Artificial Manne be orthograph'h'd, and as law scars the boundaries of his Sovereign State.*

*Binding no less the absent than the present, the Ecclesiastics than the Seculars, this be the site through which Religious time is displac'd and Natural time eras'd. It is sealed, 1648, a mythic time for a mythic place.*

*Law makes this place, exhuming its ghosts to determine cause of death and reburying them as the crumbs of faith. He be, in other words, a Prosthetic clock: a technology of forgetting. He pretends, in other words, to supplement ancestral loss, through the repetition of authority.*

*The Loss, however, of which they cannot Speak, is the Loss of Being before Time.*

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*Being is time that be defin'd by the relation to time. A technical conjugation where time makes human and law marks time. Law-writing spools a clockwork. He be prophecy, memory and history.*

*Not mine history, mine archaic time, but he writes—*

*His lines conjure a proof: the Existence of Sovereign Subject. A Subject of a many-bodied Manne, of a Father who sees—not me!—he draws the distance 'tween identical brothers. This Father is always already dead, but the Icon in his place keeps the Secret in the grave: their Secret, their first symbolic murder.*

*With such Guarantee they are free. Free to pursue Life by means other than Life. Law, as this means, be an erotic iteration that stands for the loss of Being before Time. Standing in-, for- as-, law erects a Symbolic order that, catching the light, mirrors a Religious Divine.*

*Erstwhile, the horizon of Intimate Time was disappearing before our eyes—*

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*Returning to Law's Order that gestures toward a hidden sublime, we see how he needs Virtue, in order to keep time. A utopic Virtue, an entropic dream, that they call Universal Peace.*

*Will there be Mourning? No, no.*

*Virtue is called Justice, from just war, love of fatherland and its laws. Love for the sovereign who rules thro' fraternal force. The other end of Virtue is, of course, the name they give, to their guarantee of sole access to my security.*

*Can any orphan'd woman lose the name of Virtue and still live brand'd with shame? Can any woman claim his Universal Peace? This is an ectopic theme that haunts me in my sleep.*

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*Manne, who looks too far beyond him in the care of future time, hath his heart all the day long gnaw'd on by fear of death; hath no repose nor pause of his anxiety but in sleep. And so he sleeps, and dreams dreams that seal o'er the yawning catastrophe.*

*To remain thus asleep he must set Law's time to administrate his clean and proper state. To slacken the pace of legal time would threaten his mandate, his power to decide and to procreate World as his Mirror Image. To delay the pace would threaten the turgidity and tranquility of territorialis'd debt.*

*So time is built out thro' Sovereign Law and without Delay. Didn't Hamlet say: 'For who would bear the whips and scorns of time, the law's delay, the insolence of office?' Who indeed, lest he could guarantee his Perpetual Peace?*

*Lady Landgravine, they call me. Madame the Landgravine. They gift me so they can guarantee Manne's humanity, Law's masculinity. Their passage to Life and Immunity seduces with promises of Security. But for me? What Virtue is left with no body to keep?*