

**NICAEA AND SOVEREIGNTY:
CONSTANTINE'S COUNCIL OF NICAEA AS AN IMPORTANT CROSSROAD
IN THE DEVELOPMENT OF EUROPEAN STATE SOVEREIGNTY**

by

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ABSTRACT

This research is concerned with the development of international law in so far as it relates to the historical background for the Peace of Westphalia, which itself is understood as a seminal event in the history of the growth of both the theoretical notion of sovereignty and, in its present milieu, as an attribute of states. This research gets behind Westphalia, to suggest a plausible nexus of ideology and events which led to these treaties, and to focus specifically on the event which I suggest was the *sin qua non* development which led to the Westphalian concord. I suggest that the course set for the Church at the Council of Nicaea in 325 C.E. best explains both the context and initial impetus for the treaty-making at the Peace of Westphalia in the seventeenth century. I also suggest that the similarities between the two politically charged congresses are far more than random correlatives.

In this research I will discuss the importance of Nicaea *to* Westphalia and also discuss some of the historical lineage pursuant to the idea of state sovereignty and look at its ultimate interconnectedness with the Christian religion. My suggestion in this research is that the late antiquity transformation of the Christian church from spiritual and cultural governance to temporal imperial sovereignty in Europe suggests a trenchant indication of what Nicaea represented in terms of setting a trajectory for the church's political sovereignty, a sovereignty which ultimately begun to be wrested back from it at Westphalia.

This research suggests that the sovereignty which characterized the Late Antiquity Roman Empire under the Emperor Constantine was bequeathed to the Christian Church at Nicaea by fiat. In other words, this research is suggesting a starting point for the development of European sovereignty at which Europe's most enduring institution of eighteen-hundred plus years was the main actor: the Roman Catholic Church.

TABLE OF CONTENTS

ABSTRACT	ii
TABLE OF CONTENTS	iii
ACKNOWLEDGEMENTS	iv
DEDICATION	v
OPENING QUOTES.....	vi
INTRODUCTION	1
HISTORICAL INQUIRY AND POLICY	9
CHAPTER ONE.....	12
TREATY-MAKING AS PRECEDENT FOR INTERNATIONAL LAW	15
INTERNATIONAL LAW UNDER THE AUSPICES OF THE ROMAN CATHOLIC CHURCH.....	18
NOTING THE CONSTITUTIONAL ASPECT OF CHURCH COUNCILS.....	21
THE GOSPEL ACCORDING TO CONSTANTINE	27
CHAPTER TWO.....	29
CONTEXT FOR CONSTANTINE	31
TWO FISSURES OVER TWO MILLENNIUMS	36
THE PRACTICE OF RELIGIONS AND THE COUNCIL OF NICAIA.....	39
LIPKA’S SPACIALIZATION THESIS: FROM INTERNATIONAL TO NATIONAL RELIGION	44
CONSTANTINE’S CITY	47
NICAIA, WESTPHALIA, AND SOVEREIGNTY.....	51
CHAPTER THREE.....	54
SOCRATES, PLATO, AND SOVEREIGNTY	57
ARISTOTLE AND SOVEREIGNTY	65
<i>The Greeks and Sovereignty in Summary</i>	72
CICERO: A GRECO-ROMAN VISION OF SOVEREIGNTY	73
AUGUSTINE’S IDEOLOGICAL LEGACY PERTAINING TO SOVEREIGNTY	79
AUGUSTINE’S JUST WAR: IMPINGING ON SOVEREIGNTY	84
AUGUSTINE, PEACE, AND SOVEREIGNTY	89
CHAPTER FOUR	92
SOVEREIGNTY’S FIRST RACONTEUR: JEAN BODIN	94
MORE RECENT ASSESSMENT ON SOVEREIGNTY	100
HINSLEY’S AXIOM.....	101
SOME OBSERVATIONS ON SOVEREIGNTY AND WESTPHALIA	104
WAYNE HUDSON AND POSSIBILITIES FOR SOVEREIGNTY	110
CONCLUSION	115
BIBLIOGRAPHY	118

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...in matters of state the master of brute force is the master of men, of the laws, and of the entire commonwealth.

Jean Bodin, *Les six Livres de la Republique*, 1576

The Emperor and Empire resign and transfer to the most Christian King, and his Successors, the Right of direct Lordship and Sovereignty...

Article LXXIII, *Treaty of Münster*, October 24, 1648

The approaching tercentenary of the Peace of Westphalia would seem to invite a thorough re-examination of the foundations of international law and organization, and of the political, economic, ideological and other factors which have determined their development. It may not be unreasonable to believe that such a broad inquiry, along with important insights in the forces which have shaped in the past and which shape at present the course of international law and organization, might also yield some precise data regarding the ways and means of harmonizing the will of major states to self-control with the exigencies of an international society which by and large yearns for order under law.

Leo Gross, *The Peace of Westphalia, 1648-1948*, 1948

INTRODUCTION

Stephen C. Neff recently wrote that the paucity of research in the area of the history of international law is nothing less than an intellectual scandal.¹ This state of affairs is without parallel in both academic disciplines in general, and in other branches of law.² For instance, in a recent international law textbook of 1331 pages, the subject of the historical development of international law from 2500 B.C.E. up to the sixteenth century C.E. is given a surprising *nine* pages.³ This anecdotal evidence, while not accounting for the many recent scholarly inquiries in this field, is at least putative according the assessments of scholars such as Neff. This research contributes to the filling of the lacuna in the subject area of the history of international law by examining the role of the Constantine's Council of Nicaea in 325 C.E. as a trajectory setting event which moved the Christian Church into the arena of sovereign state governance wherein it remained with varying degrees of legitimacy until the Peace of Westphalia in 1648.

This research is concerned with the development of international law in so far as it relates to the historical background for the Peace of Westphalia, which itself is understood as a seminal event in the history of the growth of both the theoretical notion of sovereignty and, in its present milieu, as an attribute of states. In keeping with the challenge of Leo Gross to re-examine the foundations of international law

¹ Stephen C. Neff, "A Short History of International Law," *International Law*, Malcolm D. Evans ed., (New York: Oxford University Press, 2006), 29.

² Neff, *A Short History*, 29.

³ Malcolm N. Shaw, *International Law*, 6th ed. (Cambridge: Cambridge University Press, 2008), 13-22.

and organization,⁴ the aim of this research is to get behind Westphalia, to suggest a plausible nexus of ideology and events which led to these treaties, and to focus specifically on the event which I suggest was the *sin qua non* development which led to the Westphalian concord. I suggest that the course set for the Church at the Council of Nicaea in 325 C.E. best explains both the context and initial impetus for the treaty-making at the Peace of Westphalia in the seventeenth century. I also suggest that the similarities between the two politically charged congresses are far more than random correlatives.

Nicaea was a politically inaugurated conference which aimed at securing Constantine's newly acquired rule via the vehicle of the large and politically organized Christian religion.⁵ The Nicene parley achieved this for Constantine in two ways. First, the obvious settling of the Arian dispute – yet only ostensibly as history would prove – was a key factor which boded well for Constantine's relationship with the bishops on the winning side of the debate, such as Athanasius and Eusebius et al. Yet, I suggest that what was more important than the quelling of this dogmatic dispute in securing the rule of Constantine was the emperor's well documented constitutional adoption of the Christian religion on behalf of the Roman Empire. If we turn to consider Westphalia, some thirteen centuries later, we see that here again we are dealing with the congresses at Münster and Osnabrüg⁶ which were rooted in, again, another deep split between the two

⁴ Leo Gross, "The Peace of Westphalia, 1648-1948," *American Journal of International Law*, vol. 42 (1948): 41.

⁵ See Jacob Burckhardt, *The Age of Constantine the Great*, trans. Moses Hadas (New York: Doubleday Anchor Books, 1956), chapter 9, 295.

⁶ Although the treaties were not signed until October 24, 1648, these two assembly's were actually called to begin on the 11th of July, 1643, and met in Munster and Osnabrug, according to the 1710 English edition of the Treaty: *The Articles of the Treaty of Peace, Sign'd and Seal'd at Munster, in Westphalia, October the 24th, 1648, in A General Collection of Treatys, Declarations of War, Manifestos, and other Publick Papers, Relating to Peace and War, Among the Potentates of Europe, from 1648 to the present*

dominant factions within Christianity, the Protestant and Catholic arms thereof. Of course, by then, the two sides of the Christian conflict were defined by nations who represented the two dominant versions of Christianity. While the Christian *religion* was at the epicenter of both these historically separated events, it does not change the fact that both the Nicene Council and the Westphalian settlement were both squarely aimed at vouchsafing a *political* peace via constitutional documents of a legal nature.

In this research I will discuss the importance of Nicaea to Westphalia and also discuss some of the historical lineage pursuant to the idea of state sovereignty and look at its ultimate interconnectedness with the Christian religion. My suggestion in this research is that the late antiquity transformation of the Christian church from spiritual and cultural governance to temporal imperial sovereignty in Europe suggests a trenchant indication of what Nicaea represented in terms of setting a trajectory for the church's political sovereignty, a sovereignty which ultimately begun to be wrested back from it at Westphalia.

This research will not attempt to deal with the vast time period between these two watershed events, for obvious reasons of length, but also because of the 'sovereignty gap,' which, for Europe, stretches from the end of late antiquity up until the early modern period.⁷ In agreement with F.H. Hinsley and Wolfgang Preiser on the subject, this

Time (London: Printed by J. Darby for Andrew Bell in Cornhill, and E. Sanger at the Post-house in FleetStreet, 1710), Treaty Opening, 2. The latter city appears as Osnabrug in this text, although the German city is known today as Osnabrück. The articles of the peace were signed and sealed at Münster, on October 24, 1648.

⁷ F.H. Hinsley noted that the idea of sovereignty was largely "irrelevant" pursuant to this period of time: F.H. Hinsley, *Sovereignty* (New York: Basic Books, 1966), 129; Wolfgang Preiser maintained that the lack of equal status between nations for this period was also vexing upon any notion of functional international law: Wolfgang Preiser, *History of the Law of Nations, Basic Questions and Principles*, in *History of International Law · Foundations and Principles of International Law · Sources of International Law · Law of Treaties*, vol. 7 of *Encyclopedia of Public International Law*, eds., Rudolf Bernhardt et al., (Amsterdam: North-Holland, 1984), 137.

research acknowledges that while many important political developments occurred between Nicaea and Westphalia, hardly any of it had an effect on international law and sovereignty where Europe is concerned. The ubiquitous presence of the two universal powers of Empire and Church were the guarantors of an Augustinian worldview which ran in an almost unbroken nexus from Augustine to Luther. While it is true that many legislatively and politically charged Church Councils took place between Nicaea and Westphalia,⁸ the all important precedent had already been set by Constantine in the fourth century. Nicaea and the consequent trajectory set for the Church by Constantine at that Council proved to be the anchor which kept the Church wedded to state regulation, legislation, and punitive enforcement until the universal powers began to come unglued: most noticeably during the Early Modern period.

The linchpin event which guaranteed the Nicene trajectory towards sovereignty and barely veiled statehood was the instalment of Gregory as pope in 590 C.E. Gregory I (540-604 C.E.) was an upper class and former Roman politician who was essentially press-ganged, both by acclamation of the people and the desperate historical context,⁹ into the papal office. Gregory continued the Constantinian tradition of political expansion under church jurisdiction by transforming the vast holdings and interstate clout bequeathed on the Church by Constantine into a powerful tax-collecting¹⁰ quasi-federation. R.A. Markus observes:

⁸ 1. Nicaea, 325; 2. Constantinople, 381; 3. Ephesus, 431; 4. Chalcedon, 451; 5. Constantinople II, 553; 6. Constantinople III, 680-681; 7. Nice II, 787; 8. Constantinople IV, 869-880; 9. Lateran I, 1123; 10. Lateran II, 1139; 11. Lateran III, 1179; 12. Lateran IV, 1215; 13. Lyon I, 1245; 14. Lyon II, 1274; 15. Vienne, 1311-1312; 16. Constance, 1414-1418; 17. Basel, 1431-1445; 18. Lateran V, 1512-1514; 19. Trent, 1545-1563.

⁹ See, for instance, Jeffrey Richards, *Consul of God: The Life and Times of Gregory the Great* (London: Routledge & Kegan Paul, 1980), 41; R.A. Markus, *Gregory the Great and His World* (Cambridge: Cambridge University Press, 1997), 3.

¹⁰ Here I refer to money which flowed to the Church under the rubric of the 'Patrimony of St Peter.'

Since the time of Constantine churches had built up extensive land holdings. By the end of the sixth century they were the largest landowners in Italy. In Gregory's time the Roman Church must have been by far the richest. It had long had registers (*polyptycha*) of its lands and of the income it derived from them, which were kept up to date. Its possessions were concentrated in Sicily and in Campania; but the 'patrimony (of St Peter)', as these possessions were collectively known, included lands scattered over Southern Italy (Bruttium-Lucania and Apulia-Calabria), Tuscany, and elsewhere in Italy, Corsica and Sardinia, Dalmatia, Gaul, and North Africa.¹¹

It has also been poignantly noted by F.H. Dudden: "It is at least quite certain that at the beginning of the seventh century the Roman Church owned many hundreds of square miles of land and drew annual revenues amounting to hundreds of thousands of pounds."¹² Henry Maine's 'tax-taking' and 'legislating'¹³ Roman Empire in the West was now in the hands of the Christian church. The rule of Gregory I and, later on, Innocent III in the late twelfth and early thirteenth centuries were periods which exemplify the historical reality that sovereign power in Europe regularly devolved on the Church with varying degrees of gravity pursuant to the strength of any, but not always as with Gregory, concomitant emperor.

While this research does not attempt any thorough treatment of Gregory and his life and times, yet it is important for the reader to understand that with Gregory we see the fulfillment of the precedent setting relationship which Constantine began with the Church at Nicaea. With Gregory the religion had finally and inexorably taken on the role of *the* sovereign power in Rome. Over the centuries this sovereign power was ultimately shared between the papal office and Frankish Kings, who were ultimately styled Holy Roman

¹¹ R.A. Markus, *Gregory the Great and His World*, 112.

¹² F.H. Dudden, *Gregory the Great: His Place in History and Thought* (London: Longmans, Green & Co., 1905), i, 296, as in Richards, *Consul of God*, 127.

¹³ Sir Henry Sumner Maine, *Lectures on the Early History of Institutions*, 7th ed., (London: John Murray, 1914): 330: "...the Roman Empire, while it was a tax-taking, was also a legislating empire. It crushed out local customs, and substituted for them institutions of its own.

Emperor's. The resilience of the affinity for this imperial designation lasted centuries, even into the Modern era where the Westphalian Treaty opens with:

In the name of the most holy and individual Trinity. Be it known to all, and every one whom it may concern, or to whom in any manner it may belong, That for many Years past, Discords and Civil Divisions being stir'd up in the *Roman* Empire, which increased to such a degree, that not only all *Germany*, but also the neighbouring Kingdoms, and *France* particularly, have been involv'd in the Disorders of a long and cruel War: And in the first place, between the most serene and most Puissant Prince and Lord, *Ferdinand* the Second, of famous Memory, elected *Roman* Emperor, always August King, King of Germany, Hungary,...; and the most Serene, and the most Puissant Prince, *Lewis* the Thirteenth, most Christian King of *France* and *Navarre*, with his Allies and Adherents on the other side.¹⁴

The strength of such terminology gives evidence of just how important the relationship between Church and empire had become throughout the course of European history, and this relationship, quite clearly, began at Nicaea in the fourth century. The robust and far-reaching dominion of the erstwhile Roman Empire had, by then, long faded into the past, but the title remained, and largely due to the Church's desire to keep continuity with their imperially favourable past, and a firm grip on their diminishing power and wealth. The Nicene council was the beginning of a partnership between Church and state, while Westphalia served as the death knell for that same entente.

Limitations and Definitions

Given the prescribed parameters of this research project, some explanatory comments need to be made pursuant to the research decisions I had to make when putting together this thesis. First, the subject matter touched upon in this project is vast, and covers a time period stretching from Classical Greece to the Modern period. It should be clear to the

¹⁴ *The Articles of the Treaty of Peace, Sign'd and Seal'd at Munster, in Westphalia, October the 24th, 1648, in A General Collection of Treaty's, Declarations of War, Manifestos, and other Publick Papers, Relating to Peace and War, Among the Potentates of Europe, from 1648 to the present Time* (London: Printed by J. Darby for Andrew Bell in Cornhill, and E. Sanger at the Post-house in FleetStreet, 1710), 1 (emphases, italics, punctuation, and spelling in original).

reader that, even based on the preceding suggestive historical materials, a comprehensive study of the subject matter I deal with is neither intended or possible.

This research has in some ways been a product of both my previous graduate work in late antiquity canon formation pursuant to the Christian religion and my studies in legal history. My familiarity with late antiquity texts is extensive and my interest in the intersection between law and religion in history speaks to the impetus behind this present research. The main focus of this research is the role played by Constantine and his Council of Nicaea in 325 C.E. in setting the Christian Church on a trajectory for sovereign power in Europe, which was ultimately wrested back from it during the Modern Period, most pointedly at the close of the Thirty Years' War, and consequent Peace of Westphalia.

The only definition which will need to be flagged for this research is my understanding of the word "sovereignty." Since my aim is to show how important Nicaea was in the long history of the Europe's engagement with the Church and ultimately the idea of state sovereignty, something must be said about what it will mean when I use the word. For this word 'sovereignty,' I think the most important thing to keep in mind is the context wherein it is used.¹⁵ Generally speaking, the word, according to noted sovereignty scholar F.H. Hinsley, can be adequately explained if the definition ends with "and no final and absolute authority exists elsewhere."¹⁶ In other words, an entity cannot be considered sovereign so long as there is another authority above that one who may overrule it.

¹⁵ Stéphane Beaulac, "The Social Power of Bodin's 'Sovereignty' and International Law," *Melbourne Journal of International Law*, 4 (2003): 27.

¹⁶ Hinsley, *Sovereignty*, 26.

The first chapter to this research project will offer the reader with some suggestive historical material in the hopes of presenting a contextual framework for some of the more detailed analysis in chapters three and four. The second chapter in this thesis is devoted to the articulation of my original contribution to the ongoing conversation about the history of European international law in the indispensable role played by Constantine and his Council of Nicaea as a trajectory setting set of factors which ultimately led the Christian Church into the realm of sovereign power in Europe. In this chapter I offer a great deal of contextually thick historical material which will help orient the reader to the era in question.

The third chapter is a survey of the Greek and Roman philosopher's treatment of the theoretical notion of sovereignty, and it presented primarily to highlight their ideological strictures for sovereign power of "morally acceptable" and "coercive." These two ideological guidelines ultimately became an important part of later work on sovereignty, and thus my reason for briefly surveying the philosophers in this present study. Again, given the parameters of this research, a full exegetical plumbing of the Greeks was neither intended nor possible. It is also important to note that very little scholarly attention has been paid to the Greeks where sovereignty is concerned, and thus my own emphasis on their contribution is somewhat tentative in nature.

The fourth and final chapter is devoted to an engagement with both Jean Bodin's work on sovereignty, and some of the more recent scholarly contributions on sovereignty. In this chapter, I make some suggestions on ways in which my own research on the subject of sovereignty might further accentuate future incarnations of both the idea and its practical usage.

Historical Inquiry and Policy

Wolfgang Preiser once lamented that late nineteenth and early twentieth century historical legal scholars purposefully ignored everything prior to the fourteenth century in international legal development.¹⁷ While it may be the case that the balance of historical inquiries have started with Westphalia, I would suggest that these councils in the late seventeenth century were as much a part of the history that necessitated them as they were a harbinger of increased self-determination and sovereignty. In other words, Westphalian sovereignty did not emerge in a vacuum, quite the contrary: Westphalia was necessitated by the immediate contextual factor of the power struggle between the French King and the Holy Roman Emperor and the more distant contingency of the pervasive and variegated involvement of the Church in state governance which had begun at Nicaea, centuries before.

By suggesting a framework of interpretation for one aspect of the historical development of international law and sovereignty which finds its beginning in Nicaea, I propose to shed new interpretive light on past events which might ultimately aid the policy makers who are, as I write this, continually drafting and re-drafting international constitutional treaties which portend an enormous impact on relations between states in the twenty-first century. My tack towards praxis for this historical inquiry has been strengthened by the keen suggestions of Wayne Hudson who has recently written:

Whereas nineteenth-century European history often sought to confirm the reader's belief in moral values already constitutive of the socio-legal order in which she or he lived, a

¹⁷ Wolfgang Preiser, *History of the Law of Nations, Basic Questions and Principles*, in *History of International Law · Foundations and Principles of International Law · Sources of International Law · Law of Treaties*, vol. 7 of *Encyclopedia of Public International Law*, eds., Rudolf Bernhardt et al., (Amsterdam: North-Holland, 1984), 127

constructive approach seeks to persuade the reader that socio-legal innovations are needed in light of historical materials.¹⁸

Hudson's encouragement of constructive approaches vis-à-vis the rank-and-file method of "pure" historical inquiry has accentuated my own comparative style of analysis, and it is my hope that by "laying out"¹⁹ some pertinent historical materials, this research will further inform the ongoing conversation about where sovereignty as an idea stems from, and, perhaps more importantly, how a more nuanced appreciation of that process will help us better steward the boundaries of any future incarnation of the idea. An important aspect of sovereignty's meaning that I assume in this research is that it is dynamic, and subject to historically situated contextual considerations.²⁰

By engaging a comparative and constructivist legal history perspective, I hope to move the conversation about sovereignty forward by asking serious questions about its hermeneutical lineage, and by challenging some of the ideas which, historically, were considered fundamental to its existence. By doing this, my aim is to positively contribute to the ongoing challenge of "re-envisioning"²¹ sovereignty, an idea which touches the lives of us all, and most especially those people in the world who find themselves in desperate circumstances. If Westphalian sovereignty was supposed to have been the harbinger of a safer world where nations respected their promises and would be corporately accountable for their acts and omissions, it has been, in large degree, a failure. This research aims to reflect on the genesis of sovereignty and raise questions which will

¹⁸ Wayne Hudson, *Fables of Sovereignty, Re-envisioning Sovereignty: The End of Westphalia?*, eds. Trudy Jacobsen, Charles Sampford, and Ramesh Thakur (Aldershot: Ashgate, 2008), 21-22.

¹⁹ Hudson, *Fables of Sovereignty*, 20-22.

²⁰ Beaulac, *The Social Power of Bodin's 'Sovereignty' and International Law*, 27.

²¹ Here I borrow the term from the recent book of essays on sovereignty, Trudy Jacobsen, Charles Sampford, and Ramesh Thakur, eds., *Re-envisioning Sovereignty: The End of Westphalia?* (Aldershot: Ashgate, 2008).

further add to the conversation on how, if at all, such an idea can be made internationally solvent.

CHAPTER ONE

A FEW CONTEXTUAL OBSERVATIONS PURSUANT TO INTERNATIONAL LEGAL HISTORY AND HISTORIOGRAPHY

The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it. Hence the idea of a cosmopolitan right is no fantastical, high flown notion of right, but a compliment of the unwritten code of law - constitutional as well as international law - necessary for the public rights of mankind in general and thus for the realisation of perpetual peace. For only by endeavouring to fulfil the conditions laid down by this cosmopolitan law can we flatter ourselves that we are gradually approaching that ideal.

Immanuel Kant, *Perpetual Peace*

As recently as November of 1944, five months after D-Day²² and the subsequent destruction of the German Army Group Centre²³ by Soviet forces during World War Two, Professor Wilhelm G. Grewe wrote from his home in war-torn Germany that “the history of the institutions of international law still requires protracted, meticulous individual research.”²⁴ The poignancy of such a comment in its historical context needs little elaboration. In 1944, the totalitarian ascendancy of Hitler’s hold on Europe was coming apart at the seams, quite literally, and heavy German losses had all but spelled both the end of the war, and the end of the German state as anyone had previously known it. The efficacy of any “international law” of that era to prevent disasters, most pointedly and yet only ostensibly finding legitimacy in the League of Nations, was a notion which had been

²² Normandy Landings: a.k.a. D-Day, June 6, 1944.

²³ Operation Bagration, June 22-August 19, 1944.

²⁴ Wilhelm G. Grewe, *Preface to the First Edition*, in *The Epochs of International Law*, (trans. & rev. Michael Byers; Berlin: Walter de Gruyter, 2000), XIII.

decimated by the brutal tragedy and loss of life which swept an entire continent, as well as many other parts of the world.

Yet even within the maelstrom of those last two years of the Second World War, international law continued to operate as the allied states worked together to put an end to the German army once and for all. The Yalta Conference²⁵ in 1945 was not so much a dividing of the spoils of war²⁶ as it was an arrangement whereby Britain, the United States, and Russia cooperated with each other to secure the occupation of Germany and insure a post-war peace. This was international law working on perhaps a rudimentary level and during a time of crisis, but I think it shows quite clearly the resilience of inter-state relations in spite of the circumstances and also in spite of clear political differences between the Soviet Union and the two Western powers. Grewe's comment, though, taken in context, strikes one as strongly critical of, at least, the academy's lack of understanding pursuant to international legal institutions, and almost certainly the lack of efficacy in practical international law which was unable to prevent the ravaging of sovereignties throughout Europe and other parts of the world.

Wolfgang Preiser, some forty years after Grewe, explained in more detail that one of the problems leading to the vacuum of knowledge in the general area of international legal history is that legal historians of the late eighteenth and early twentieth century were rather taken with their own successes and were therefore only concerned with the genesis of international law pertaining to the Modern Period.²⁷ He maintains that everything

²⁵ Yalta Conference, February 4-11, 1945.

²⁶ Notwithstanding the permanent Soviet occupation which occurred in the post-war period.

²⁷ Wolfgang Preiser, *History of the Law of Nations, Basic Questions and Principles*, in *History of International Law · Foundations and Principles of International Law · Sources of International Law · Law of Treaties*, vol. 7 of *Encyclopedia of Public International Law*, eds., Rudolf Bernhardt et al., (Amsterdam: North-Holland, 1984), 127.

before the fifteenth century was “consciously left out of consideration.”²⁸ In Preiser’s estimation this was due in part to the Modern Ages’ over confidence in expounded theory and intellectuality, which eventually led to the astounding “assumption that a higher legal order could be neither developed nor sustained in the absence of legal scholarship.”²⁹ He goes on to point out, though, that by his own times, international legal historians had made some rudimentary steps forward by, for instance, noticing that the law of international engagement between states involving sanctions against states and other basic notions actually derived from the time of the ancient Greek *polis*, long before the time of Christ, let alone Hugo Grotius.³⁰ Preiser also notes, though, that it became apparent to more recent scholars that international legal practice throughout history was continually accompanied by the theoretical ideas and claims of theologians, philosophers, historians, and then lawyers. Preiser’s conclusion is that although the modern era’s theories were more detailed than their predecessors, it contained hardly anything in principle that was unique.³¹

One of the most positive results of these new discoveries in the field of international legal history was that it was beginning to become clear to many that the world outside of Europe and the Near East contained histories which were replete with examples of international law.³² Preiser poignantly suggests:

There is much to be said for refusing to be satisfied with the extensions to the history of European international law outlined above and instead for opting definitely for the inclusion of the international systems which arose away from the world of Europe and the Near East – which until recently have been treated rather like isolated, inconsequential curiosities – within the subject of the history of international law. The objection here that, strictly speaking, these are not direct antecedent stages of “our” history is not tenable. General legal history is, for

²⁸ Preiser, *Law of Nations*, 127.

²⁹ Preiser, *Law of Nations*, 127.

³⁰ Preiser, *Law of Nations*, 127.

³¹ Preiser, *Law of Nations*, 128.

³² Preiser, *Law of Nations*, 128.

good reasons, concerned with all legal developments of the past regardless both of where or when they appeared, and also of whether or not they prevailed over the longer term. The history of international law has no reason for proceeding otherwise.³³

Preiser is quite adamant, though, that one can only find evidence for international law in history wherein you have states of an equal rank at issue. To his way of thinking, international law was only present when the pre-condition of equal rank was present between, it would seem, at least two states.

Treaty-making as Precedent for International Law

Preiser writes of Rome's rise to pre-eminence in the centuries leading up to the common era by noting that "international law based on equality of the subjects of the law was replaced, first by a system of alliances dictated by Rome, and finally by the provincial system."³⁴ Rome's general pre-eminence vis-à-vis its allied neighbour states, its vassal states, and its provinces, made international law somewhat of a phantom in Preiser's estimation. The problem here is that, in these "dictated alliances" and "provinces" of a Roman provenance, there exists much documented and extant evidence on the various obligations and expectations between these states, notwithstanding their obvious power imbalances. Israel, for instance, was an ally of the Roman Republic during the Hasmonean period, and a treaty between them from 161 B.C.E. reads:

23. May it be well for the Romans and for the nation of the Jews by sea and by land forever and may the sword and the foe be removed far from them.

24-26. But if war is made on Rome first or on any of their allies in all their dominion, the nation of the Jews shall fight on their side with all their heart, as the occasion prescribes for them. To those who make war they shall not give or supply grain, arms, money, or ships, as seems good to Rome. And they shall keep their covenants without receiving anything therefore.³⁵

³³ Preiser, *Law of Nations*, 128.

³⁴ Preiser, *Law of Nations*, 137.

³⁵ *Treaty between the Romans and the Jews*, 161 B.C., trans. Allan Chester Johnson, Paul Robinson Coleman-Norton, and Frank Card Bourne, *Ancient Roman Statutes* (Austin: University of Texas Press, 1961), Doc. 35, 32.

The mere fact that Rome was more powerful than the Hasmonean Kingdom did not negate any and all evidence of a rudimentary “international law” between the two nations. Interesting as well, here, is that Rome’s treaties are generally concerned with either securing a peace after a war or preventing one with allied states, which is similar to the intention behind both the Nicene and Westphalian exercises.

Two separate treaties with Carthage dating from the sixth century and third century, respectively,³⁶ give evidence of a Roman Republic which was actively trying to establish treaty law between themselves and another state which they saw as either a potential ally or enemy, especially given their close quarters. Although the growth of the Republic alongside the expanding Carthaginian Empire ultimately led to a clash between states, the infamous Punic Wars (264-146 B.C.E.), it seems important to note that these written documents of a legal nature were, at least in some way, expected by the parties to be effectual ways of carrying on international relations, regardless of whether they were a failure or not. In fact, in terms of this research, both the Council of Nicaea and the Peace of Westphalia can be interpreted as failures in that regard as well. Yet the imprint of international legal precedent which the documents arising from these gatherings produced in the long run was, and is, still very important to the ongoing development of custom and practice which became emblematic of future exchanges in international law. The constitutional nature of both Nicaea and Westphalia speak to just how resilient the practice of written treaties was in the long run.

Within Preiser’s own analysis on the Roman period through the Middle Ages, the stringency of his “equality” demand all but disappears when trying to justify the many

³⁶ *Treaty Between Rome and Carthage, Ancient Roman Statutes*, Doc. 3, 7.

power imbalances which existed on the European continent during, for instance, the Early Modern Period. Europe at this time was littered with a veritable panoply of principalities, duchies, and burgeoning republics, along with their concomitant emperor and pope, all of which were engaging in inter-state relations based on mutual recognition, yet all these parties were in a strikingly unequal position of power vis-à-vis the other. Preiser was forced to concede that “the list of subjects of international law was at all events not limited to the Emperor, the pope, and the rulers of the rising major territorial States, but included also, as participants in international relations among equals, powers of lesser rank.”³⁷

Even today, the United Nations (UN) is full of unequal partners: and though they are considered *theoretically* equal, the matter, for instance, of which nations will sit on the Security Council has nothing to do with equality but concerns the initial make up of the council which fell to those states which were victorious at the close of World War II. The fact that these nations make up the five richest and most influential nations in the world perhaps follows naturally given their vested interest in the status quo; yet it is duly noted that this reality is simultaneously an inequitable one, being now so far past the Second World War. But, here again, disputes between the ‘big five’ and states of a lesser rank are a daily aspect of modern international law, and the disparities in relative strength are not supposed to affect decisions made by the UN sponsored courts such as the International Court of Justice and the International Criminal Court. The fact remains that power imbalances do not rule out functional relationships between states; and where there are inter-state relations, by definition, there is international law.

³⁷ Preiser, *Law of Nations*, 145.

International Law Under the Auspices of the Roman Catholic Church

The law of nations concerns the occupation of territory, building, fortification, wars, captivities, enslavement, the right of return, treaties of peace, truces, the pledge not to molest embassies, the prohibition of marriages between different races. And it is called the 'law of nations' *ius gentium* because nearly all nations (gentes) use it.

Isidore of Seville 560-636 C.E.
The Etymologies of Isidore of Seville

It would... be absurd to contend that international law, in its arguably proper sense of accepted formal norms of international relations, originated in the mid-17th century, it is, on the contrary, as old as the conduct of relations between identifiable independent political entities, whether or not termed 'States' in any modern sense.

Natural Law, Religion and the Development of International Law
Hilaire McCoubrey

As Isidore of Seville indicates in his *Etymologies*,³⁸ international law, at least in late antiquity, was the result of a long nexus of precedent involving customary behaviour between states, and, by this account, such law was understood to have been engaged regularly. Hilaire McCoubrey's observation³⁹ on the absurdity of the oft' times assumed 'Westphalian supremacy' in the study of the history of international law works together with Isidore of Seville's late antiquity evidence to suggest that the treaty-making at Westphalia was neither *sui generis* or a break from any number of ancient examples involving inter-state legal transactions. The universal powers of pope and emperor, both of whom shared sovereign control over much of Europe during the long Middle Ages – ensconced as they were in a Christian world-view based on an Augustinian cosmology and theology – may have retarded the progress of international law between states throughout Europe and the Mediterranean Basin, but they did not extinguish it.

³⁸ Isidore of Seville, *The Etymologies of Isidore of Seville*, (Translated and Edited by Stephen A. Barney, W.J. Lewis, J.A. Beach, and Oliver Berghof; Collaboration of Muriel Hall; Cambridge: Cambridge University Press, 2006), Book 5.6, 118.

³⁹ Hilaire McCoubrey, "Natural Law, Religion and the Development of International Law," *Religion and International Law*, Mark W. Janis & Carolyn Evans eds., (London: Martinus Nijhoff Publishers, 1999), 179.

David J. Bederman has written that “Religion mixed with custom and with reason to produce different combinations of sanctions in ancient international relations. This should come as no surprise, since even in modern societies these constraints on human behaviour combine in sometimes surprising ways.”⁴⁰ Certainly the presence of religion as a controlling factor in, say, current Middle Eastern legal cultures is an obvious example of an interdependency of the sort suggested by Bederman. The fact that, for these cultures in the Middle East, religion is very much part of the fabric of both law and life means that any explanation of their law must, by definition, appeal largely to a serious examination of the institutions of Islam and their concomitant effects on the behaviour of the people. Religion in the West had a similar intrinsic nature to it for a very long period of time, almost the entire Common Era, in fact. Christianity from Nicaea to Westphalia was as much a part of the fabric of law and culture then as Islam has been and continues to be the basis for many legal systems up to the present. This fact is lost on no one who has even a cursory understanding of global political turmoil at the beginning of the twenty-first century.

This research is suggesting that the genesis of Thirty Years’ War itself, the immediate cause of the Peace of Westphalia, took place in the cradle of the Roman Empire, with the religion of Christianity playing the main role. This idea is axiomatic in as much as the international order we know today was begun in earnest by Christian nations alone.

Professor Yoram Dinstein writes:

Initially, the international system rested upon Catholic foundations, in as much as it was “formulated in a Catholic atmosphere by Spanish theologians and publicists.” Horizons were broadened when Protestants began leaving their imprint on international law. All along, there was a residue of Jewish influence underlying both Catholic and Protestant contributions. In

⁴⁰ David J. Bederman, “International Law in Antiquity,” in *Religion and International Law*, Mark W. Janis & Carolyn Evans eds., (London: Martinus Nijhoff Publishers, 1999), 3.

sum, there is no question that, originally, international law was a product of Judeo-Christian European civilization.⁴¹

On the other hand, keeping in mind the homogenous aspect of this overriding variable of international law, it was *diversity* of peoples and beliefs which served as the potent impetus behind establishing an international order such as the one at Nicaea. In much the same way as the UN and European Union (EU) rest on efforts to secure the peace after two World Wars and socio-political discord within Europe, so too was Nicaea convened to bring conflicts to an end and secure the newly realized Constantinian peace. One of the reasons Nicaea was important is that it aimed to bring together representatives of various geographical and cultural locales for the purpose of dialogue aimed at producing a peace.

Yet, history has since shown how tragically naïve such an attempt was, primarily because Constantine and the Church tried to enforce the peace by quashing diversity and insisting on a normative constitutional framework for the Christian Church which had the Roman sword as its guarantor. By not allowing the two versions of Christianity to co-exist, this constitutional council sacrificed the possibility of genuine unity amongst diverse groups, and instead set the “orthodox” Church on a course for state governance, which was fundamentally in conflict with both the doctrines and practice of the Christian religion for the first three-hundred years of its existence. This present research is presented with the assumption that giving sovereign state power to a religious body is an idea which has been proven time and again to be fundamentally flawed.

⁴¹ Yoram Dinstein, “International Law as a Primitive Legal System,” *New York University Journal of International Law and Politics*, vol. 19 no. 1 (Fall 1986): 17 – 18; In Quotations, J.B. Scott, *The Catholic Conception of International Law*, (Washington : Georgetown University Press, 1934), 493.

Noting the Constitutional Aspect of Church Councils

According to current international law norms, states only require an *effective and independent system of government of a community within a defined territory*.⁴² By this accounting, the Roman Church would have met the requirements of statehood at many points on the linear trajectory from Nicaea to Westphalia. The very fact that the Catholic Church of the Middle Ages was the largest landowner in Europe, and could prosecute its laws, ordain kings, and punish with impunity, gives more than enough evidence of its sovereignty: however flawed a version it may have been. This research suggests that the Council of Nicaea in 325 C.E. was the trajectory setting event in the Christian Church's history which brought them into sovereign political power. This research, however, is not suggesting that their sovereign power was either illimitable or robust at every point along the way between the two watershed historical events of Nicaea and Westphalia.

Nicaea was the Constantinian settlement of the Church, following the Emperor's consolidation of the Roman Empire in 323. It is important to note that Nicaea was political as much as religious. Constantine not only convened the Council, which made the decisions binding on the then nascent and future realm of Christendom,⁴³ but himself sat above the Bishops in full regalia as the proceedings took place. The internecine fighting in the Church over doctrine threatened the stability of the Empire, along with Constantine's own place of power within it,⁴⁴ and he commanded it to an end.⁴⁵ One of

⁴²Article 4 of UN Charter, Benedetto Conforti, *The Law and Practice of the United Nations*, 3rd ed. (Leiden: Martinus Nijhoff Publishers, 2005), 25.

⁴³ Joanna Balaskas, "The International Legal Personality of the Eastern Orthodox Ecumenical Patriarchate of Constantinople," *The Hofstra Law & Policy Symposium*, vol. 2 (1997): 150.

⁴⁴ Kelly A. MacGrady and John W. Van Doren, "AALS Constitutional Law Panel on Brown, Another Council of Nicaea?," *Akron Law Review* vol. 35 no.3 – 4 (2002): 378 – 379.

the main results of this Council was an agreed upon Creed, a statement of doctrine that would be defended against all other interpretations and belief systems called by the name Christian: and there were a number of them.⁴⁶ As well, following Nicaea, the Roman Church canonized, for the first time, their accepted scriptural writings;⁴⁷ their ethical *code*, if you will. Further and key to this research is the constitutional format of the canon law which came out of Nicaea and formed a precedent which has been followed right through to our day, with major modifications albeit. This ancient Roman council was essentially making law, statutes which were binding and enforced, both by the Church and the Roman state.

At Nicaea, here at the very beginning of the nexus between state and Church, laws which were binding on various nationalities under the umbrella of the Church, and which touched on both spiritual and secular matters were created in the very same document.

For instance, canons included the following:

Canon 3: This great synod absolutely forbids a bishop, presbyter, deacon or any of the clergy to keep a woman who has been brought in to live with him, with the exception of course of his mother or sister or aunt, or of any person who is above suspicion.⁴⁸

Canon 4: ... a bishop should be appointed by all the bishop's of the province. ... but in each province the right of confirming the proceedings belongs to the metropolitan bishop.⁴⁹

Canon 6: The ancient customs of Egypt, Libya and Pentapolis shall be maintained, according to which the bishop of Alexandria has authority over all these places.⁵⁰

⁴⁵ Leslie W. Barnard, "Church – State Relations, A.D. 313 – 337," *Journal of Church and State*, col. 24 no. 2, (Spring 1982): 346.

⁴⁶ Arianism, Gnosticism, Marcionism, etc.

⁴⁷ In a festal letter of 367 written at Easter, then Pope, Athanasius specified the only accepted writings of the Catholic Christian Church: see specifically, Athanasius, Letter XXXIX (For 367.) in Philip Schaff and Henry Wace, Editors, *A Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, vol. 4, (Grand Rapids: Eerdmans, 1975), 551 – 552.

⁴⁸ G. Alberigo, J.A. Dossetti, P.P. Joannou, C. Leonardi, and P. Prodi, "First Council of Nicaea – 325," *Decrees of the Ecumenical Councils*, vol. 1: Nicaea I to Lateran V, Norman P. Tanner ed., (Washington: Sheed & Ward, 1990): 7.

⁴⁹ Alberigo et al., *Decrees of the Ecumenical Councils*, 7.

⁵⁰ Alberigo et al., *Decrees of the Ecumenical Councils*, 8-9.

Canon 15: ... bishops nor presbyters nor deacons shall transfer from city to city.⁵¹

When one considers that these decrees were binding on future generations, and that in the Middle Ages, bishops and abbots became some of the biggest landowners and feudal autocrats in Europe, how church functionaries were to be voted in was of crucial political and social importance. Further to these and other canons at Nicaea, a letter was drafted and sent out by this council to various Egyptian churches and the language used in places is strikingly legal in nature. It reads:

Since the grace of God and the most pious emperor Constantine have called us together from different provinces and cities to *constitute* the great and holy synod in Nicaea, it seemed absolutely necessary that the holy synod should send you a letter so that you may know what was proposed and discussed, and what was decided and *enacted*.⁵²

Under the Roman emperor Constantine, himself present at the proceedings, the bishops framed their understanding of what they were doing in legal language, and set out their canons in a similar way to codified Roman law.

From here until Westphalia, the Church continued to create law binding on its members – all of Europe – and it got to the point where it was difficult to tell if some of their laws had any toehold in the Christian religion at all. An example from the First Lateran Council in 1123 will suffice: “Whoever knowingly makes or intentionally spends counterfeit money shall be separated from the communion of the faithful as one accursed, an oppressor of the poor and disturber of the state.”⁵³ A similar law in Canada reads: Every one who... procure[s] or dispose[s] of counterfeit money ... is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.⁵⁴

⁵¹ Alberigo et al., *Decrees of the Ecumenical Councils*, 13.

⁵² ALbergio, *Decrees of the Ecumenical Councils*, 16, [emphasis added].

⁵³ First Lateran Council – 1123, Alberigo et al., *Decrees of the Ecumenical Councils*, 193.

⁵⁴ *Canadian Criminal Code*, R.S. 1985, c. C-46, s. 460(1).

Clearly the Church was creating law in an area we understand today as the purview of the state alone. Yet the Church was creating law not just for one geographic area or nationality of people, but instead for multiple nationalities located across an area stretching from Scotland to Jerusalem.

Another observation which can be made about the first Council, Nicaea, is that Constantine and his organizers were forced to overcome the complication of different languages being spoken by the representatives at the congress. Christopher M. Bellitto writes:

[T]he east quite literally spoke one language (Greek) while the west spoke another (Latin). Each language had its own nuances that could not be translated exactly into the other. Not every eastern bishop and theologian who spoke Greek could fluently comprehend and speak Latin, and vice versa. At times, the east and the west spoke at or past each other, not with each other. True dialogue could not take place. (A modern example might be the way diplomats wearing headsets at United Nations debates sometimes miss the subtleties of a treaty's phrasing because there is no precise counterpart in German, say, for a word in Chinese.)⁵⁵

Such a strong disconnect between representatives from the many different regions of the, then, known world made translation necessary, but as Bellitto points out, there could not have been any guaranteed one-for-one exchange. Notwithstanding the possible defects which are indicative of translations in general, the fact that there were translators at this council convened by the Roman Emperor shows that for perhaps the first time, organized attempts to come to consensus between nationalities was taking place, and that in itself is important as a precursor and precedent to future assemblages of a similar nature.

Keeping in mind, then, the Church's legislative function which developed over the centuries in the context of Church councils, it would seem that this first gathering, whose legal personality was divested across a range of people groups, was the first incarnation,

⁵⁵ Christopher M. Bellitto, *The General Councils: A History of the Twenty-One Church Councils from Nicaea to Vatican II* (New York: Paulist Press, 2002), 20.

if you will, of international forums. Nicaea may have been the beginning of the practice of legal decrees agreed upon by a multi-national group of individuals: or, if not the beginning, then it was certainly an important precedent for future European conciliar practice.

Following the Council of Nicaea, though, ancient Rome's flame of Western supremacy went out, and the tribal peoples for whom Rome had cajoled and abused for so long came home to roost. Rome was sacked by the Visigoths in 410, led by King Alaric I, then sacked again by the Vandals in 455, led by King Geiseric, and finally by Ostrogoths and King Totila in 546, the latter of whom killed many of those living in the ancient city. The vacuum of leadership left by the vanquished imperial machinery of ancient Rome was taken up in large part by the Latin Christian Church, Constantine's Church.

Pope Gregory the Great *ca.* 540 – 604, took on the papal office in 590 and had previously been a city Prefect who came from a very wealthy and affluent family of the Roman upper class. Important to understanding Gregory's reign as Pope is the fact that the Roman society of that time was in palpably desperate straits due to natural disasters, plagues, and the encroaching Barbarian raids. R.A. Markus has observed that "[t]he fifty years before he became bishop of Rome was a period of insecurity unparalleled in Roman history, certainly since the 'crisis of the third century.'"⁵⁶ These contextual factors combined with his past political experience and status meant that Gregory, although having recently made the choice to live a monastic life, had essentially no choice in the matter. He was made Pope by acclamation of the "clergy, nobles, and people."⁵⁷

⁵⁶ Markus, *Gregory the Great and His World*, 3.

⁵⁷ Richards, *Consul of God*, 41.

Gregory was Pope, but he was also very much a politician, law-maker, and military man into the bargain. He raised a standing army for the city of Rome to protect it from occasional barbarian raids, and took responsibility for civil and municipal matters as well. Due to the lack of any substantial Byzantine force to protect Rome, Gregory was forced to use the vast resources of the Church in the protection and interests of the Empire.⁵⁸ In fact, Gregory once himself lamented:

Under the colour of the episcopate I have been brought back to the world [*ad saeculum sum reductus*] and here I labour under such great earthly cares as I do not recall having been subjected to even in my life as a layman.⁵⁹

It is with this Pope that we see the Church begin to take *full* responsibility for governance. Jeffrey Richards writes that “Gregory’s reign illustrates perfectly the process whereby the popes, without any settled intention of doing so, gradually became the undisputed masters of Rome.”⁶⁰ Gregory also established links with the Merovingian kings of central Europe which ultimately led to the conversion of the Franks. Suffice it to say, Gregory transformed the papal throne from a strictly spiritual leadership role under imperial control, to an imperial governance role under ostensible spiritual control.

This transfer of power was possible primarily because of the Constantinian settlement between Church and state which happened some 288 years earlier. Hillaire McCoubrey has pointed out the importance of the Constantinian settlement to the development of international law by noting that: “[w]ith the so-called Peace of the Church in 312 and the adoption of Christianity as an, and later the, official religion of the Roman Empire, the phase of scholastic naturalist concern with international law may in some sense be said to

⁵⁸ Richards, *Consul of God*, 86.

⁵⁹ Gregory the Great, cited in Markus, *Gregory the Great and His World*, 13.

⁶⁰ Richards, *Consul of God*, 85.

have begun.”⁶¹ His focus here is ultimately on the figures of Augustine (354-430 C.E.) and Aquinas (1225-1274) and their philosophical impact on understandings of the *nature* of the state: for Augustine one of sin, for Aquinas, merely variable depending on form.⁶² Augustine’s doctrine’s are, without question, in large part responsible for the form and content of the worldview and politics of the medieval Church – roughly 500 to 1400 C.E. – and it is not at all shocking to reflect that a perspective which sees the state as innately sinful would lead to fanciful justifications for the destruction of *other* nations. The Crusades are a tragic case and point of such a misguided view of the world.

The Gospel According to Constantine

It has also been recorded that [Constantine] despised evil and regularly remarked that it was necessary that the man in control spare nothing at all, [26] not even his own limbs themselves, to ensure the stability of public affairs.

Zonaras, *The History of Zonaras*, 13.4.25-4.26, (ca. 1100 C.E.)

Such a contextual fact about the Roman Emperor Constantine is noticeably dissonant when compared with words of a similar nature spoken by Christianity’s founder, Jesus of Nazareth. He said that one should be willing remove a limb to avoid sin and hell.⁶³ The contrast produced by these apposed statements is emblematic in some way of the change in role which Constantine imposed on the political structure of the fourth century Christian Church. While formerly given over to strictly religious rites and practice, the Church under Constantine began its transformation from spiritual to temporal governance.

⁶¹ Hilaire McCoubrey, “Natural Law, Religion and the Development of International Law,” *Religion and International Law*, Mark W. Janis & Carolyn Evans eds., (London: Martinus Nijhoff Publishers, 1999), 180.

⁶² McCoubrey, *Natural Law, Religion and the Development of International Law*, 180.

⁶³ If your right eye causes you to sin, tear it out and throw it away; it is better for you to lose one of your members than for your whole body to be thrown into hell. And if your right hand causes you to sin, cut it off and throw it away; it is better for you to lose one of your members than for your whole body to go into hell. Matthew 5:29-30 (NRSV, Anglicized Version).

The Church which had been appropriated by Constantine was ultimately going to, partly out of necessity, appropriate to itself the role of governance in the West whenever the imperial machinery proved unable to do so.

The Church was able to keep Constantine's vision of the partnership between Church and Emperor alive for nearly one-thousand years, and as discussed below, this precedent laden relationship was to prove the immediate cause for the Thirty Years' War and consequent Peace of Westphalia, which is the keystone development in the history of modern international law and the concomitant development of state sovereignty. For this research, though, I think what is fundamentally important for the reader to understand is this axiomatic belief of Constantine's that no cost was too high in the pursuit of public order. Again, Constantine's primary concern was *public* order. I suggest that it is through this lens of interpretive contextual data which the Council of Nicaea and Constantine's attendant treatment of the Christian Church must be seen.

CHAPTER TWO

THE *MULTINATIONAL* COUNCIL OF NICAEA

For as, by a sincere confession of the truth, we ourselves, in obedience to the Council of Nice, worship God as the Creator of all things, and as the Fountain of our imperial sovereignty...

Emperors Honorius and Theodosius II, *Letter to Bishop Aurelius* (June 419 C.E.)

In 325 C.E., representatives from Libya, Syria, Phoenicia, Arabia, Palestine, Egypt, Thebes, Persia, Scythia, Pontus, Galatia, Cappadocia, Phrygia, Pamphylia, Thracia, Macedonia, Spain, and other imperially governed regions met at the command of a Roman emperor in the city of Nicaea, in what was then Bithynia.⁶⁴ The mere composition of the summit, alone, leads to the supposition that there was some manner of international conference being held. This “world-wide”⁶⁵ conglomeration of nationalities, numbering over two-hundred and fifty religious leaders⁶⁶ – *to wit*, bishops of the Christian Church – was convened by the most powerful political leader of the, then, known world. Constantine the Great (272 – 337 C.E.)⁶⁷ had summoned these dignitaries both to consolidate his own newly acquired political power⁶⁸ and because his recently procured imperial peace was being threatened by the real possibility of further conflict. Christian

⁶⁴ Modern day city of İzmit, in Turkey.

⁶⁵ Eusebius of Caesarea, *Eusebius: Life of Constantine*, trans. Averil Cameron and Stuart G. Hall (Oxford: Clarendon Press, 1999), 3.6.1, 123.

⁶⁶ Eusebius, *Life of Constantine*, 3.7.1, 124.

⁶⁷ All dates hereinafter can be assumed to be of the Common Era unless specified otherwise.

⁶⁸ Jacob Burckhardt, *The Age of Constantine the Great*, 295.

bishops were verbally attacking one another and whole populations were coming close to all out physical confrontation.⁶⁹

What can be known about Constantine's life and times comes from primarily three extant sources. Eusebius of Caesarea, Bishop of Caesarea during Constantine's reign, wrote *Vita Constantini* (VC), or *Life of Constantine*, this being the largest work devoted to the Emperor which survives. Zosimus, a pagan historian from the early sixth century,⁷⁰ wrote *Nea Historia*, or New History, which covers the first four centuries of the Roman Empire and includes a shorter account of the Emperor's reign and politics. The third source is an even shorter work known as *Origo Constantini Imperatoris*, and it is written in the style of an epitome, and therefore it covers the events of Constantine's life in a rather abbreviated matter.⁷¹ Although the author is unknown, it has been suggested that it would have been someone writing from the late fourth century.⁷² All three accounts are rather indicatively coloured by the contexts and intents of their authors, especially the

⁶⁹ Eusebius, *Life of Constantine*, 2.73, 119-120: But it was too great a matter to be dealt with by the letter, so that the ferocity of the quarrel increased, and the spreading evil reached every province in the east; 3.4, 122: The bishop of one city was attacking the bishop of another, populations were rising up against one another, and were all but coming to physical blows with each other; Paulus Orosius, *Seven Books of History Against the Pagans: The Apology of Paulus Orosius*, trans. Irving Woodworth Raymond (New York: Columbia University Press, 1936), 7.28, 365: When Arius also incited to riot those whom he had led into error, an assembly of three hundred and eighteen bishops was convened at Nicaea, a city of Bithynia. See also Athanasius, *History of the Arians, St. Athanasius: Select Works and Letters*, ed. Archibald Robertson, vol. 4, *A Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1980), 270 ff.: even after Constantine had mandated a peace by fiat, the battle that had been raging between the two sides went on, and Athanasius, who was Bishop of Alexandria after Alexander, and was against Arius et al., goes on at some length to describe the intensity of the struggle.; Other extant accounts: Theodoret, *The Ecclesiastical History of Theodoret*, trans. Blomfield Jackson, *A Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1979), 1.1-1.7, 33-44, as well as Socrates Scholasticus, *The Ecclesiastical History by Socrates Scholasticus, Socrates, Sozomenus: Church Histories*, rev. A.C. Zenos, vol. 2, *A Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1983), 1.1-1.10, 1-18.

⁷⁰ Ronald T. Ridley, *Zosimus: New History* (Canberra: Australian Association for Byzantine Studies, 1982), xii.

⁷¹ A. Diane Boleyn, *Origo Constantini Imperatoris: A Translation and Commentary* (Master's Thesis: Boise State University, 1996), 1.

⁷² *Ibid.*, 6.

works written by Eusebius and Zosimus. Eusebius wrote the *VC* as a friend and subordinate of the Emperor Constantine, and it is a work which regularly delves into hagiography. Scholars recognize and oftentimes emphasize this weakness, but even Jacob Burckhardt, one of Eusebius' most outspoken critics on record,⁷³ cannot deny the accuracy of much of the historical data contained in the *VC*.⁷⁴ Burckhardt saw Eusebius as dishonest because he interpreted the events of Constantine's life through a Christian lens, and often exaggerated or filled in details which he had no business doing. Even in light of this, though, the basic details of the *VC* have been treated as reliable in the main.⁷⁵

On the other hand, Zosimus, the writer of *New History*, was a pagan historian who described Constantine in the most unflattering terms. Yet here again, regardless of the lack of dispassion on Zosimus' part, the historical details are basically sound.⁷⁶ It is the interpretation of the events, as with Eusebius, which has given rise to much criticism.

Context for Constantine

From the time of the Roman Empire's crisis in the third century right through Diocletian's Tetrarchy and up to Constantine's own period of accession to Caesar, the vast and unwieldy dominions of Rome had been reeling in social, political, and military

⁷³ Burckhardt famously wrote, 'Eusebius is no fanatic; he understands Constantine's secular spirit and his cold and terrible causes of the war quite precisely. *But he is the first thoroughly dishonest historian of antiquity.* His tactic, which enjoyed a brilliant success in his own day and throughout the Middle Ages, consisted in making the first great protector of the Church at all costs and idea of humanity according to his lights, and above all an ideal for future rulers.' [emphasis added] Jacob Burckhardt, *The Age of Constantine the Great*, trans. Moses Hadas (New York: Doubleday Anchor Books, 1956), chap. 8, 272.

⁷⁴ Burckhardt wrote, 'Although this story comes from Eusebius, whose notions of paganism in general are not always the most precise, and whose desire for truthfulness is not always compelling, nevertheless in view of the evil and savage nature of Maxentius there is no ground to doubt the tale.', Jacob Burckhardt, *The Age of Constantine*, chapter 6, 200.

⁷⁵ See generally Ramsay MacMullen, *Constantine* (London: Croom Helm, 1969); See also Charles Matson Odahl, *Constantine and the Christian Empire* (London: Routledge, 2004), 3.

⁷⁶ Odahl, *Constantine and the Christian Empire*, 7-8.

chaos. In 325, just prior to the Council in question, the maelstrom had finally paused. In hindsight one wonders whether this period was really a cessation of hostilities or merely the eye of the storm. Constantine had finally put down his last serious rival in the Emperor Licinius, and after first sparing his life at the request of his sister who was married to the man, and “for fear that Licinius might again, with disastrous results for the State, resume the purple which he had laid down,”⁷⁷ Constantine soon had him assassinated.⁷⁸ I suggest that it is strongly indicative of Constantine’s calculating disposition that he called this council at Nicaea on the heels of a newly acquired and tentative political peace. In other words, Constantine was in no mood for another war. Constantine’s Machiavellian⁷⁹ disposition was, according to the Pagan historian Zosimus, well known due to the offhand killing of his own son, Crispus, followed by his brutal execution of the young man’s stepmother and his own wife, Faustus.⁸⁰ According to another late antiquity historian, Orosius, Constantine also killed off his own nephew,

⁷⁷ *Origo Constantini Imperatoris, The Excerpts of Valesius*, trans. John C. Rolfe, *Ammianus Marcellinus*, vol. 3 of 3, *The Loeb Classical Library*, eds. T.E. Page, E. Capps, and W.H.D. Rouse (London: William Heinemann, 1939), 5.29, 525. Diane A. Boleyn translated the passage, ...but Constantine, thinking about the example of Herculus Maximian his father-in-law, lest Licinius again take up imperial power to the disaster of the republic, and having been forced by the outcry of the soldiers, ordered that Licinius be killed in Thessalonica, and Martinianus in Cappadocia.: Diane A. Boleyn, “Origo Constantini Imperatoris: A Translation and Commentary” (MA Thesis: Boise State University, 1996), 5.29, 34.

⁷⁸ *Origo Constantini Imperatoris*, 5.29, 525. See also, Zosimus, *Zosimus: New History*, trans. Ronald T. Ridley (Canberra: Australian Association for Byzantine Studies, 1982), 2.28.2 – 2.29.2, 36.

⁷⁹ Niccolo Machiavelli, 1469-1527 C.E., wrote famously: When it is absolutely a question of the safety of one’s country, there must be no consideration of just or unjust, of merciful or cruel, of praiseworthy or disgraceful; instead, setting aside every scruple, one must follow to the utmost any plan that will save her life and keep her liberty. ⁷⁹ Niccolo Machiavelli, *Discourses on the First Decade of Titus Livius*, trans. Allan Gilbert, *The Chief Works and Others* (Durham: Duke University Press, 1958), Book 3.41, 519. Such an outlook accords well with what we know of the Emperor Constantine.

⁷⁹ Hinsley, *Concept of Sovereignty*, 281.

⁸⁰ Zosimus, *Zosimus: New History*, trans. Ronald T. Ridley (Canberra: Australian Association for Byzantine Studies, 1982), 2.28.2 – 2.29.2, 36. Zosimus tells us that Constantine killed Crispus based on suspicion that the young man had intercourse with his stepmother Faustus. When Constantine’s mother proved unconsolable upon the boys death, he apparently killed the mother, his wife, in an overheated bath (2.29.2, 36-37).

Licinius.⁸¹ Zosimus records that Constantine's guilt over killing Crispus and Faustus was the key ingredient to his adoption of Christianity. Apparently an Egyptian Christian, unnamed, of the royal court told him he could be forgiven anything if he adopted Christianity.⁸² We are told that Constantine "abandoned his ancestral religion" and embraced Christianity.⁸³ This sea change in the new emperor's religious loyalties augurs importantly when considering the importance of *context* pursuant to the Council of Nicaea, discussed further below.

Constantine called the council to vouchsafe and guarantee peace because it was apparent to him that if he did not intervene, more "disastrous results" for his *state* might follow.⁸⁴ So intervene Constantine did. He wrote letters to the two main combatants in the dispute, Alexander and Arius.⁸⁵ What is telling of the serious and widespread nature of this political threat is that these letters, astonishingly, had no apparent effect. Eusebius records that "it was too great a matter to be dealt with by the letter, so that the ferocity of the quarrel increased."⁸⁶ How these letters from an Emperor, who represented such decisive military strength, could not calm the pervasive hostilities perhaps goes to some

⁸¹ Orosius, *Seven Books of History Against the Pagans: The Apology of Paulus Orosius*, 1936, 7.28, 366.

⁸² Zosimus, *New History*, 2.29.3-4, 37.

⁸³ Zosimus, *New History*, 2.29.4, 37.

⁸⁴ On the political nature of Nicaea generally, see: Robert M. Grant, "Religion and Politics at the Council of Nicaea," *The Journal of Religion*, vol. 55, no. 1, (January 1975): 1 – 12; Øyvind Norderval, "The Emperor Constantine and Arius: Unity in the Church and Unity in the Empire," *Studia Theologica* 42, (1988): 113 – 150; T.G. Elliott, "Constantine and 'the Arian Reaction after Nicaea,'" *Journal of Ecclesiastical History*, vol. 43, no. 2, (April 1992): 169; Thomas G. Elliott, "Constantine's Preparations for the Council of Nicaea," *The Journal of Religious History*, vol. 17, no. 2, (December 1992): 136; John E. Lynch, "The Reception of an Ecumenical Council: Nicaea II a Case in Point," *The Jurist* vol. 48 (1988): 457; Leslie W. Barnard, "Church – State Relations, A.D. 313 – 337," *Journal of Church and State*, col. 24 no. 2, (Spring 1982): 346.

⁸⁵ Alexander (date of birth unknown: died 326 C.E.) was the Bishop of Alexandria, at the time, and Arius (ca. 250-336 C.E.) was a priest in the same city.

⁸⁶ Constantine, Eusebius, *Life of Constantine*, 3.73, 119-120.

length in explaining why Constantine, chafed as he was by the conflict, wanted to get this growing unrest settled as quickly as possible.

Constantine was also induced to call the general assembly, as Jacob Burckhardt once poignantly suggested, not only to calm internecine conflicts of the Christian Church, but importantly because he saw the political organization of the church as a ready vehicle through which his own power might be further consolidated. Burckhardt wrote:

Constantine found the clergy already so suitably organized for power and so elevated by the persecution that he must either rule through this corporation and its high credit or acquire its irreconcilable enmity. He therefore gave the clergy every possible guarantee of favour, even as far as a sort of participation in rule, and in return the clergy were the most devoted agents for spreading his power, and completely ignored the fact that he still stood with one foot in paganism and that his hands were over and again stained with blood.⁸⁷

This observation is central to my own unique suggestion that here at Nicaea, the Christian Church was being put on a trajectory for political rule and state sovereignty, which ultimately led Europe to the Early Modern religious crises that forced the Peace of Westphalia. I also suggest that regardless of his *actual* reasons for giving the Christian Church a role in governance in and around the period of the council Nicaea, the important fact is that Constantine did bequeath the Church with political power.

For instance, Constantine made the decisions of the bishops binding and no longer appealable to the pagan courts.⁸⁸ Eusebius writes:

He also put his seal on the decrees of bishops made at synods, so that it would not be lawful for the rulers of provinces to annul what they had approved, since the priests of god were superior to any magistrate.⁸⁹

The fact that he put the bishops on an even footing with the pagan judges shows to what lengths the Church was being moulded in to a sovereign organization. Burckhardt

⁸⁷ Jacob Burckhardt, *The Age of Constantine the Great*, trans. Moses Hadas (New York: Doubleday Anchor Books, 1956), chapter 9, 295.

⁸⁸ Burckhardt, *The Age of Constantine the Great*, chap. 9, 297.

⁸⁹ Eusebius, *Life of Constantine*, 4.27.2, 163.

comments on this seemingly surprising move by the Emperor by writing, “what was he to do when, by the general tendency of the age, the Church had turned into the state under his hands and the state into the Church.”⁹⁰ Similarly, Francis Herbert Stead has variously noted that:

In social organization, Christianity was powerfully influenced by the pagan Empire. The Church may in its earliest local phases have owed much to Greek and Roman collegia of various kinds, notably burial clubs, and also to the Jewish synagogue; but the chief formative attraction, whether consciously recognized or not, was Roman Imperialism.⁹¹

As the city Church extended and had many branches, they were entrusted to presbyters under the superintendence of the bishop of the mother-Church. Gradually the bishops of the greatest cities extended their sway over the surrounding country; and Diocletian’s term – diocese – for a political division of his Empire passed into the Church.⁹²

...throughout the provinces of the Roman Empire, the Churches felt themselves to be members of One Universal or Catholic Church. The analogy with the Empire is obvious. The Catholic Church grew to be an Empire within an Empire.⁹³

Yet this burgeoning theocracy, according to Burckhardt, was not merely the work of Constantine alone, or even of his attendant bishops, but was rather the necessary result stemming from a process within world history.⁹⁴ Based on the, then, exponential growth of the Christian Church, Burckhardt generally characterizes Constantine’s embracing of the religion as the move of a consummate pragmatist and artificer, and one who knew very well that for a succinct consolidation and legitimization of his rule, the transfer of some aspects of the Empire’s sovereign power to the Church was essentially a *fait accompli*.⁹⁵ The question as to why may be speculated and disagreed upon, but the fact

⁹⁰ Burckhardt, *The Age of Constantine the Great*, chap. 9, 297.

⁹¹ Francis Herbert Stead, *The Story of Social Christianity*, vol. 1 of 2 (London: James Clarke & Co., Limited, 1924), 45.

⁹² Stead, *Social Christianity*, 45-46.

⁹³ Stead, *Social Christianity*, 46.

⁹⁴ Burckhardt, *The Age of Constantine the Great*, chap. 9, 297.

⁹⁵ Burckhardt, *The Age of Constantine the Great*, chap. 9, 299: ‘Who could prevent this clergy from constituting itself the state government after it had converted the pagan majority? What means were left to the ruler to remain master, or at least not servant or even pensioner of its priests? Emperor and local bishops alike now had their burial place in the Church of the Apostles at Constantinople...’

that Constantine opened the door to a shared political rule with the Church seems reasonably clear from the extant texts.

Two Fissures over Two Millenniums

Constantine's Council in 325 was convened to vouchsafe stability and guarantee his own rule in the Empire, to be sure, but this required bringing peace to the dominant religion of Christianity which, above and beyond the societal instability it was causing, was also threatened internally by the growing Arian polemic. A *prima facie* look at the facts pursuant to the internal conflict reveals that there was a doctrinal dispute and the sprawling Christian Church had been consequently bifurcated into two dogmatic groups. A large segment of the Christian population took the side of one Bishop Alexander of Alexandria (died 326), who held that Christ was God and had existed along with him for all time.⁹⁶ An equally large segment of the population sided with a Christian priest named Arius (*ca.* 250-336 C.E.), who taught that Christ was the firstborn of all God's creation, and so had a beginning, unlike God.⁹⁷ Each separate camp in this war over dogma eschewed the other's teaching and proclaimed their opponents heretical. The Roman world seemed to be teetering towards another large scale confrontation because of *dogma*. From our perspective in the twenty-first century, such a state of affairs seems odd, to say

⁹⁶ Bishop Alexander of Alexandria, *Deposition of Arius*, *St. Athanasius: Select Works and Letters*, ed. Archibald Robertson, vol. 4, *A Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1980), 69-72.

⁹⁷ Arius, *The Letter of Arius to Eusebius, Bishop of Nicomedia*, in Theodoretus, *Ecclesiastical History: A History of the Church in Five Books*, *The Greek Ecclesiastical Historians of the First Six Centuries of the Christian Era in Six Volumes* (London: Samuel Bagster and Sons, 1843), chap. 5, 23-25, Arius writes: But we say and believe, and have taught, and do teach, that the Son is not unbegotten, nor in any way unbegotten, even in part; and that he does not derive his subsistence from any matter; but that by his own will and counsel he has subsisted before time, and before ages, as perfect God, only begotten and unchangeable, and that he existed not before he was begotten, or created, or purposed, or established. For he was not unbegotten. We are persecuted, because we say that the Son had a beginning, but that God was without beginning.

the least. How could the political stability of the largest empire the world has ever known have been threatened by dogma? I will suggest an answer to this further below.

If we move forward in time to the seventeenth century and the Thirty Years' War (1618-1648), there we find, as impetus, another massive and largely doctrinal bifurcation in the Christian religion, that between the Roman Catholic Church and its component nations vis-à-vis the Protestant nations. In much the same way as the vast numbers of Christians in the Roman Empire under Constantine split into two groups who thought the other deeply heretical, so to did the people of Europe in the seventeenth century differ by concomitantly embracing either a Catholic or Protestant Christianity: and in this latter case, the Roman Catholic Church had legislated all Protestants as heretics in the, oftentimes, tragically worded documents issued at the Council of Trent (1545-1563 C.E.). This latter council took place less than a century before the outbreak of the Thirty Years' War. One of the main differences between the two generationally separated conflicts arising out of dogma was that the first ended with an ostensible peace resulting from the Council of Nicaea while the other resulted in a brutal and decimating war. This war lasted thirty years before the various European *Christian* monarchs and statesmen decided to make peace, the Peace of Westphalia.

Another important difference between these two historically separated conflicts was the fact that at Nicaea, although the Christian church had threatened the political stability of the empire, there was a more clear delineation between imperial power and the church. Westphalia, on the other hand, was necessitated because the Roman Christian Church had long since evolved into a co-regency of military imperial power and, in the context of having to deal with such powerful combatants, it could not simply do away with the

heretics, as was previously so often the case. The protestant heretics, by then, represented whole nations, thanks, in large part, to the reforming work of people such as John Wyclif (*ca.* 1325-1384 C.E.) from England, Jan Hus (1372-1415) in Bohemia, Martin Luther (1483-1546) of Germany, and Jean Calvin (1509-1564) hailing from France. Interesting, as well, in this observation is the fact that when we consider that these people lived in three fairly distinct time periods, their locations suggest that the cleavage in Christianity was a pan-European cultural phenomenon. The Thirty Years' War highlighted how divided Christianity in Europe actually was.

I suggest that the fact that the Roman Christian Church had moved from spiritual oversight to temporal sovereignty in Europe suggests a trenchant indication of what Nicaea actually represented in terms of setting a trajectory towards political and sovereign governance. The church had taken Constantine's lead in the dance of politics and power, and from Nicaea to Westphalia the Church went from spiritual and doctrinal overseer to a place of political and military imperial power. Of course, the church ended up sharing this role with its concomitant emperors, but the fact that by the seventeenth century they were still so inextricably tangled up in the affairs of state and empire meant that their recalcitrant stance concerning the "heretical" protestant nations was a key impetus plunging Europe into that apocalyptic war. Historian Salomon Reinach once poignantly noted that it was not until Europe's "tardy enlightenment" that the secular power "refused to lend itself any longer to the fury of theological hate."⁹⁸ The Thirty Years' War and Westphalia would force this point decidedly.

⁹⁸ Salomon Reinach, *A Short History of Christianity*, trans. Florence Simmonds (London: William Heinemann, 1922), 2.30, 55.

In 1648, during the English Civil War, and while at the Westminster School in London,⁹⁹ a sixteen year old boy was forced to come to grips with the results of the genocidal Thirty Years' War which had been responsible for the brutal and seemingly senseless deaths of millions of Europeans. That boy's name was John Locke.

I will now discuss the importance of Nicaea as a distant precedent for Westphalia by making some observations about the social and political context wherein this first council was historically situated.

The Practice of Religions and the Council of Nicaea

Jovius Maximinus Augustus to Sabinus. I am persuaded that it is manifest both to thy Firmness and to all men that our masters Diocletian and Maximian, our fathers, when they perceived that almost all men had abandoned the worship of the gods and associated themselves with the nation of the Christians, rightly gave orders that all men who deserted the worship of their gods, the immortal gods, should be recalled to the worship of the gods by open correction and punishment.

Roman Emperor Maximinus, *Letter to Sabinus* (ca. 312 C.E.)
Eusebius, *The Ecclesiastical History*

Most important was, of course, the emperor's position as *pontifex maximus*, which gave him *de facto* all-encompassing religious powers in Rome as well as throughout the Empire. The emperor thus controlled, even if only potentially, all religious decision-making, although he was much less interested in actual cult performance.

Michael Lipka, *Roman Gods: A Conceptual Approach*, 2009

During the fourth century of the Common Era, and in every place on earth that Roman soldiers cast their shadows, the practice of religion was ubiquitous. Religions were as common then as, say, currency is today. Very few people today get by without money, and those who do, are usually recipients of goods bought with money, so that it touches virtually everyone on the planet. Religion, in the fourth century, had a similar saturation level. While it may be true that one person may have had more of it invested in his life than others, and another preferred certain gods over others, yet everyone, whether

⁹⁹ W.M. Spellman, *John Locke* (Hong Kong: MacMillan Press Ltd, 1997), 9.

sincere or not, participated at some level in the various Roman religions. In fact, in most cases, as far back in recorded history as you wish to look for any given region of the world, you will usually come face to face with a blatantly theistic worldview. Not until the beginning of the Modern era, perhaps, did such a statement cease to be true for much of the Western World.

Another analogy which might be helpful towards understanding how politically important religion was to the late antiquity Roman world is to reflect on how we treat politics today. In the United States, for example, people usually fall into two political camps, the Republicans or Democrats. Notwithstanding the nomenclature, people from all income levels, all backgrounds, and all associations can side with either party, it is a distinction which alleges to cut across class distinctions with vigour. In the same way, the vast array of religions in the fourth century, most pointedly for this research, Christianity which favoured the poor, ensured there were choices available to all and sundry. But this was not, however, the case with fourth century Roman politics. There, class contingency was fundamentally institutionalized, dating back to the earliest days of the republican senatorial experiment. I suggest that this general analogy between late antiquity cults and politics forces one to concede that fourth century religions were, at least in some degree, akin to twenty-first century political parties in the way they gave purchase to the political voices of millions of non-elites in a way that ultimately affected the execution of governance. In terms of the Latin world of antiquity, with no religion could this be more the case than it was for Christianity.

Due to the keen and incisive work of scholars like Michael Lipka, quoted above,¹⁰⁰ the absolutely *essential* role played by religions in Greco-Roman societies is fast becoming a commonly accepted fact in the literature. I flag it here to emphasize just how deeply ingrained the role of religion was in the lives of all people, rich or poor,¹⁰¹ within Constantine's Roman Empire, including those who governed the state. Scholar A.D. Lee has recently noted that:

The world in which Constantine grew up during the late third century was a world "full of gods." It was full of gods in the sense that "religion pervaded every aspect of political and social life" and that religious life in the Roman Empire encompassed an extraordinary diversity of deities and of expressions of devotion to those deities.¹⁰²

Constantine was the Roman emperor who, perhaps, best exemplifies the degree to which religion was considered a tenet on which the Roman Empire depended for its relative success or failure. One piece of evidence to this effect is found in a letter preserved by Eusebius of Caesarea 263-339, written by Constantine to all Roman citizens and provincials after he had defeated his enemies and consolidated the Roman Empire in the early fourth century. After waging his final successful campaign against the former Roman Emperor Licinius (250 – 325 C.E.), Constantine wrote two letters to the aggregation of people across the empire's vast dominions. One of these letters was sent to the Christians in every city while the other was, according to Eusebius, sent to the "outsiders in each city,"¹⁰³ those who had not adopted the new religion. The letters seem to be aimed at explaining who and what had caused the Empire's recent troubles and also

¹⁰⁰ Michael Lipka, *Roman Gods: A Conceptual Approach* (Leiden: Brill, 2009), 176; Lipka cites within, R. Stepper, *Augustus et sacerdos. Untersuchungen zum römischen Kaiser als Priester* (Stuttgart 2003).

¹⁰¹ Lipka, *Roman Gods*, 167-185.

¹⁰² A.D. Lee, *Traditional Religions*, *The Cambridge Companion to the Age of Constantine*, ed. Noel Lenski (New York: Cambridge University Press, 2006), 159. Cited title and subsequent quote from Keith Hopkins, *A World Full of Gods: Pagans, Jews and Christians in the Roman Empire* (London: Weidenfeld & Nicolson, 1999), 43.

¹⁰³ Constantine, Eusebius, *Life of Constantine*, 2.23.2, 104.

describe Constantine's subsequent rise to power. The letters also evidence that Constantine had determined to have the many past injustices against Christians put right. Eusebius records that the letters were reproduced in Latin and Greek and sent to all corners of the empire.¹⁰⁴

The letter to the "outsiders" is extant and instructive for this research, especially where it concerns the contextual reality that during the reign of Constantine, from the British Isles to the Fertile Crescent and beyond, all people participated in their respective religions. In fact, such activity was concomitant with the state's encouragement, participation, and oftentimes regulation.

Constantine wrote to those Roman citizens across his vast Empire who had not adopted the new Christian religion in a fashion which is instructive to the main emphasis of this research: that the Council of Nicaea was a key precedent for developments within international law. Constantine wrote his letter to these "outsiders" using a theistically charged delivery and explanation of the, then, recent events, and so in this sense he was clearly not writing to convince them of the existence of a god, *per se*, but to direct their attention toward the *Supreme* God, upon whom Constantine credited all his successes. Among other things, Constantine wrote:

For a long time past it has been obvious to those of right and sound views about the Supreme, and to the absolute exclusion of all doubt, how great that difference is which distinguishes the correct observance of the most sacred cult of Christianity from those who are violently hostile and adopt a contemptuous attitude to it.¹⁰⁵

For who is likely to meet with any good, if he neither acknowledges the God who is the source of good things, nor is willing to worship him properly? The facts themselves provide confirmation of what has been said.¹⁰⁶

¹⁰⁴ Constantine, Eusebius, *Life of Constantine*, 2.23.1-2, 104.

¹⁰⁵ Constantine, Eusebius, *Life of Constantine*, 2.24.1, 104.

¹⁰⁶ Constantine, Eusebius, *Life of Constantine*, 2.24.3, 104.

Those, however, who either contemptuously ignored the right, or did not acknowledge the superior realm, who flagrantly subjected to outrages and savage punishments those who in faith pursued it, and who failed to recognize that they were themselves wretched for having punished them on such pretexts, or that those who had gone to such lengths to preserve religious respect for the Supreme were fortunate and blessed indeed, many of their armies have fallen, many have turned to flight, and their whole military organization has collapsed in shame and defeat.¹⁰⁷

He [the supreme God] examined my service and approved it as fit for his own purposes; and I, beginning from that sea beside the Britons and the parts where it is appointed by a superior constraint that the sun should set, have repelled and scattered the horrors that held everything in subjection, so that on the one hand the human race, taught by my obedient service, might restore the religion of the most dread Law, while at the same time the most blessed faith might grow under the guidance of the Supreme. I could never fail to acknowledge the gratitude I owe, believing that this is the best of tasks, this is a gift bestowed on me. Now my advance reaches the eastern lands, which, oppressed with graver calamities, cried out for the cure from us to be greater also. Indeed my whole soul and whatever breath I draw, and whatever goes on in the depths of the mind, that, I am firmly convinced, is owed by us wholly to the *greatest* God.¹⁰⁸

[L]et each and every one of you observe with close attention what that authority is which has been established, and what grace: it has eliminated and destroyed the seed, so to speak, of the most evil and wicked men, and spreads unstintingly to all lands the newly recovered happiness of good men; it gives back again full authority for the divine Law itself to receive with all reverence the accustomed cult, and for those who have consecrated themselves to this to perform the due rites. If they have as it were looked up out of the deepest darkness and take clear cognizance of what is happening, they will henceforward manifest towards him appropriate religious reverence and corresponding worship.¹⁰⁹

If these excerpts are from a letter to people who had *not* adopted Christianity, then, clearly, one of the inferences about this variegated group of recipients one can deduce is that they were people whose lives were already decidedly vested in their religious beliefs. If such palpably religious discourse from Constantine was offered to his entire *civitas*, then there must have been an expectation that such discourse would be effective. Constantine wrote this religiously charged letter to a people who were, while not Christian, still deeply committed to the idea that another spiritual world existed which affected not only their daily lives, but also the success or failure of their state.

¹⁰⁷ Constantine, Eusebius, *Life of Constantine*, 2.26.2, 105.

¹⁰⁸ Constantine, Eusebius, *Life of Constantine*, 2.28-29.1, 105-106 (emphasis added).

¹⁰⁹ Constantine, Eusebius, *Life of Constantine*, 2.42, 109.

Augustine's reflections, for instance, in his *City of God* on the integral role of gods in the lives of people within the empire also bears out this point conclusively.¹¹⁰ The foregoing observations on Constantine are made in an attempt to better orient the reader, contextually, to the palpable nature of religion's role in the life of not only the most powerful and influential political figure of late antiquity, the Emperor, but also within fourth century Roman society at large.

Lipka's Spacialization Thesis: From International to National Religion

Another key to understanding the importance of context in regards to this era is to observe how comprehensively Constantine brought a monotheistic Christianity into confluence with an already poly-theistic society and culture. Michael Lipka has most recently written on the importance of 'spacialization' pursuant to Roman religions. He notes that "all major Roman gods were clearly and emphatically marked by permanent spatial foci of their cults in the city, especially by a temple."¹¹¹ Yet Christianity, prior to Constantine, had no such dominating physical and societal edifices. An obvious reason for this was the fact that, being a persecuted and despised religion, such as they often were for the first three-hundred years of their existence, they could not hope to be as recognizable or associated with "space" as the Roman religions were.

Constantine's participation in the issuing of the Edict of Milan, 313 – which had freed the Christians and legislated religious toleration across the empire – had not really

¹¹⁰ Augustine, *Concerning The City of God against the Pagans*, trans. Henry Bettenson (London: Penguin, 1984), 4.11, 149-152; see chapter four of *City of God* generally for similar evidences of the role of gods in the lives of Romans. See also, A.D. Lee, *Traditional Religions*, 1999.

¹¹¹ Lipka, *Roman Gods*, 187.

changed the essential nature of Christianity as a stateless religion.¹¹² The Edict of Milan meant the Romans had acknowledged Christians, but it was not until Nicaea that the adoption became constitutionally entrenched. Lipka, on this transformation, notes that the Christian and Jewish religions had the only ‘international gods’ in the ancient world.¹¹³

He writes:

It was the spatial independence that gave the Christian and Jewish gods an advantageous position: first, it made them virtually impregnable and 'immune' to imperial intervention. Since the Jewish and Christian gods were not spatially bound, their cult was elusive and beyond the control of Roman officialdom. Second, such independence made the Christian and Jewish gods extremely marketable merchandises that could easily be accommodated to virtually any environment without further expense. The latter point was reinforced by the monotheistic character of the two gods, allowing their export virtually anywhere without the necessity to accommodate their functions (naturally, a single god was functionally indifferent). In fact, in their striking lack of spatial focalization and functional self-sufficiency the Christian and Jewish gods were the only 'international gods' of the ancient world, the gods, as pointedly remarked by Weber, favoured by "itinerant journeyman", (Weber, *Economy*, 512) or in the words of Ando, "in ambition a truly imperialist cult." (Ando, 2007, 445) It was not until Constantine the Great that the Christian concept of god began to be formed by spacial foci.¹¹⁴

Constantine’s changes to the practice and “space” of the Christian religion was a monumental shift away from its previously heterogeneous and locally determined existence. This set the Christian religion at the epicentre of the Roman state, and thus state involvement, not unlike the saturation level the pagan religions enjoyed with the empire previous to his reign.

Lipka emphasizes that it was with Constantine that the practice of Christianity was converted to reflect a pagan Roman model.¹¹⁵ I suggest that an important part of this transformative process was the Nicene episode wherein the emperor convinced the multi-national representatives to agree on the wording of the ‘treaty’ in a markedly

¹¹² ‘Stateless religion’ is my elaboration on Lipka’s notion of ‘international gods,’ Lipka, *Roman Gods*, 187-188.

¹¹³ Lipka, *Roman Gods*, 187-188.

¹¹⁴ Lipka, *Roman Gods*, 187-188.

¹¹⁵ Lipka, *Roman Gods*, 28.

constitutional way. By moving the Church towards this practice of international congresses and precedent setting documents, he moved the Christian religion out of its organic and diverse existence to a pagan model where the practice of the 'ancient traditions' became the all important key to their existence. It can be no surprise then that the Roman Catholic Church ultimately decided that the life of the religion would be guided not merely by the sacred texts, as was the practice of Judaism and early Christianity, but instead decided the Church must be fundamentally informed by tradition. Lipka comments on some unique aspects of this transformation:

In Rome - as in the rest of the Roman World - the systematic 'spacialization' of Christianity was virtually invented by Constantine the Great, who thus adopted the pagan practice of attributing specific space to divine concepts and applied it to his new god (clearly not only for reasons of piety).¹¹⁶

But not only did Constantine allocate specific urban space to his new official cult, he also set a precedent for a new architectural type of building to make this space, the *basilica*. Inspired by the forms of profane civil buildings and palatial or classical hypostyle architecture, this new edificial type combined pagan traditionalism with Christian innovation.¹¹⁷

In a very acute way, Constantine's adoption and patronage of Christianity meant that the religion was being Romanized according to principles and practices which had erstwhile belonged the traditional religions of Rome. Whatever importance those religions had in the life of the state was now being transferred to Christian religion. The bureaucratic structure that already existed in the Christianity of the fourth century, with its attendant priests and bishops ordering the lives of Christians all across the Empire, was deftly transformed by Constantine in to a centrifugal Roman cult, which, as Lipka's research supports, changed the emphasis from faith to space. In the same way Rome was the spacially located centre of the Roman Empire, now, under Constantine's regime, so it became the centre for the Christian religion. The fact that Rome's imperial ideal could

¹¹⁶ Lipka, *Roman Gods*, 28.

¹¹⁷ Lipka, *Roman Gods*, 28.

possibly live on in the seemingly prescient presence of the Christian religion in every corner of his Empire meant that his legitimacy could be enforced through an existing framework of local governance, as Burckhardt has suggested.¹¹⁸

This settling effect which Constantine's Nicene beneficence had on both the Church and the Roman Empire were, according to Lipka, indicative of the longstanding practice to encourage the centralization of a cult in an Empire which was constantly surfeited with transient populations representing a variety of belief systems. Lipka writes:

In polytheistic culture, demographic density and fluctuation, caused by immigration, were tantamount to a dense and constantly shifting system of divine concepts, all competing with each other. The only guarantee of stability and continuity was a permanent spatial focus for the cult.¹¹⁹

Stability and continuity were exactly the traits that the Empire had long been in need of – although it might be a deuce difficult to argue it had ever wholly been the case – and it is interesting to note how Constantine's attention to the Christian religion and its "space" were indicative of his two most monumental achievements, the Nicene Council and the founding of his city, Constantinople. Both these events were fixated on space, and both events were about creating stability and continuity. While the location of Constantine's imperially inaugurated councils changed, their legislation was binding on the whole Empire. In the same way Nicene decisions were made to be precedent setting decisions, Constantinople was to be the precedent setting city.

Constantine's City

If the historian Zosimus is correct, Constantine's onetime display of Christian piety in excusing himself from the traditional pagan religious rites upon the Capitol seems to have

¹¹⁸ *Vide supra.*

¹¹⁹ Lipka, *Roman Gods*, 188.

engendered the hatred of the senate and the people in Rome, and it was apparently due to this political change in climate that he then left to build his new city.¹²⁰ This new venture, built on the site of what was then the city of Byzantium, enabled Constantine to build up from a *tabula rasa* up to his ideal *inclutior urbis*. Constantine was able to ‘spacialize at will’ at this new site, but as the record shows, he seems to have given both the Christian religion and the ancient religions similar deference based on how he constructed the new city. The historian Zonaras, whose own history was the product of a number of other earlier accounts,¹²¹ records that Constantine’s new building program made the city many times larger.¹²² He writes:

Churches were consecrated by him therein and many things were done for its adornment, above all the circular porphyry column, which, the story goes, was conveyed from Rome and set up in the marketplace which was covered with paving stones from which it derived its name “The Plaza.” On it he consecrated a bronze cult statue, a marvel to behold on account of its craftsmanship and size. For it was gigantic, and it exhibited the precision of an ancient hand, almost fashioning things actually animant. It is said that the cult statue was a monument of Apollo which had been transferred from the city of Ilium in Phrygia. That most divine emperor erected the statue in his own name, having fastened to its head some of the nails which fastened the body of our Lord to the salvific cross.¹²³

Now the great Constantine adorned the city in many other ways and by elevating Byzantium, which previously was a bishopric of Thracian Heracleia, since it had been subjected to Perinthus by Severus after its capture (as is related in my treatment of Severus), to the patriarchal rank, having preserved seniority for the senior Rome on account of its senior birth and on account of his transference of the sovereignty hither from there.¹²⁴

Perhaps the two most striking aspects of these passages from Zonaras are that, first, Constantine’s centerpiece for the city, the great statue of Apollo, was altered slightly to give some honour to the Christian god, and thus *prima facie* appears as a great confluence of Christianity with the empire’s pagan religious traditions and architecture.

¹²⁰ Zosimus, *New History*, 2.29.5, 37.

¹²¹ Thomas M. Banchich, *The History of Zonaras: From Alexander Severus to the death of Theodosius the Great*, trans. Thomas M. Banchich and (late) Eugene N. Lane (London: Routledge, 2009), 1-2; Zonaras, *History of Zonaras: From Alexander Severus to the death of Theodosius the Great*, Prologue 1.3-1.7, 23-25.

¹²² Zonaras, *History of Zonaras*, 13.3.17, 155.

¹²³ Zonaras, *History of Zonaras*, 13.3.18, 155.

¹²⁴ Zonaras, *History of Zonaras*, 13.3.19, 155.

Constantine's ameliorating actions pursuant to his new choice of Christianity as the state religion implies an attitude of toleration, and perhaps a willingness on his part to embrace both Rome's pagan past and the burgeoning Christian faith. The second notable observation is the fact that Zonaras understands the sovereignty as having been physically transferred from Rome to Constantinople, along with the Emperor. While the sovereignty may have moved with the Emperor on this accounting, one cannot escape the fact that based on the textual evidence, Constantine in nowise intended to take the primacy away from Rome as the Christian centre. This is important to my inquiry since in the West it was the empire that ultimately fell and the religion that lasted. The West's sovereignty, however tentative such may have been, naturally devolved on his spatially located Christian Church in Rome.

The observations from the pages of Zonaras' history seem to confirm Lipka's main contention that Constantine was clearly concerned about giving the official cults a geographically bounded space wherefrom they could radiate outwards with the stability and unity for which we know he so dearly longed. Constantine is recorded as having remarked a number of times that "it was necessary that the man in control spare nothing at all, [26] not even his own limbs themselves, to ensure the stability of public affairs."¹²⁵ Constantine's Nicene Council and his re-building of Byzantium are surely two of the greatest examples on record of just how serious the Emperor was when it came to stabilizing the Empire. With the foregoing in mind, it is perhaps not surprising then, that Christianity, spacially anchored as it would continue to be due to Constantine's efforts, would continue to emanate and be legitimated from the two city centres which he had helped anchor it to.

¹²⁵ Zonaras, *History of Zonaras*, 13.4.25-4.26, 158.

I maintain that Nicaea was far more than a gathering of bishops. In a modern Western society where religion means very little to very many, a gathering of bishops would hardly attract notice; but in a culture where religion was the framework around which people organized their lives, a gathering of multi-national religious leaders summoned by the head of state is tantamount to a *political* conference. I suggest that this first international conference aimed at securing a political peace was both a distant precedent for the Peace of Westphalia and, as well, the primary historical and transformational event which necessitated it. Notwithstanding any twenty-first century objections to the contrary, and as Burckhardt so adeptly noted,¹²⁶ the Christian religion in the era of Nicaea was an organized governing body. What has to be kept in mind, as well, is the fact it was Constantine who summoned these religious leaders to convene before him and in no sense did the Christian religion call this conference on their own initiative. This was a political conference with religious connotations and not the other way around.

Nicaea was an international council of religious leaders held in a context where the practice of religions was a defining characteristic of the body politic. It also seems reasonable to suggest that while Nicaea was first occasioned by the internecine conflict arising out of dogma in the vast Christian Church, by the time the crisis progressed to the point that Constantine decided to call the council, it seems it was the decision of a calculating emperor looking to guarantee consolidated power rather than an effusion of Christian enthusiasm. With these considerations in mind, I suggest Nicaea is better understood as a multi-national political forum which inextricably set Europe on a course towards the era of the universal powers, and hence, Westphalia.

¹²⁶ *vide supra*.

Nicaea, Westphalia, and Sovereignty

Sovereignty is a concept whose theoretical lineage is steeped in the idea that to be effective it must be both moral and coercive. In noting this, perhaps naturally, I mean morally and coercively executed for the benefit of the *civitas* and not the opposite. In a fundamentally unbroken nexus from Socrates to Hobbes, thinkers have long contended that humankind's fundamental flaws, whether arising from unfamiliarity with the "good" or from "original sin", were so fatal that sovereign governance over citizens of a *polis* must be facilitated *via* a coercive regime. These same political theorists, and here I refer specifically to any important thinker who has contributed to the "great conversation" pursuant to civil administration in so far as it concerns the European branch of such thought, have also insisted that this coercive sovereignty must ultimately be for the benefit of those citizens who make up the state. Put simply, political theorists have maintained that citizens on their own are not capable of self-governance and require some form of paternalistic leadership.

Further, the emergence of state sovereignty is an idea which is supposedly intimately connected with the Peace of Westphalia in 1648. This research recognizes that there are a variety of opinions on the solvency of such a claim, but assuming that the treaties of Münster and Osnabrüg¹²⁷ were important to the development of state sovereignty, this research suggests that an important precedent which necessitated the onset of Westphalia happened thirteen-hundred years earlier at the Council of Nicaea. Thirteen-hundred years is a massive swath of history, but the twenty-one inter-regional Christian Church councils

¹²⁷ *The Articles of the Treaty of Peace, Sign'd and Seal'd at Munster, in Westphalia, October the 24th, 1648, in A General Collection of Treaty's, Declarations of War, Manifestos, and other Publick Papers, Relating to Peace and War, Among the Potentates of Europe, from 1648 to the present Time* (London: Printed by J. Darby for Andrew Bell in Cornhill, and E. Sanger at the Post-house in FleetStreet, 1710), Treaty Opening, 2.

which took place at various points along this historical trajectory may provide the sovereignty discourse with more food for thought as to how Westphalia came about in the first place. In other words, what were the constitutional and conciliar precedents which brought states together at Westphalia to break the ubiquitous cultural and partly political hold which the Roman Church had over the imperial states within Germany? I note that this connection between Church and State was first born at Nicaea, and that just as Constantine represented the real political power at the first conference of bishops, so the representatives of France and Sweden took on a similar role at the treaty tables of Westphalia. France and its allies were now wresting back a similar role of raw political power, however coloured it was with Christian pretext, and thus this event had more certainly set a new trajectory away from universal powers and towards true state and territorial sovereignty.

I suggest that the Council of Nicaea in 325 C.E. was a trajectory-setting event in the nexus of transactions which brought the Roman Church into a place of barely veiled state sovereignty by the sixth century. Based on the extant texts and their corroborative evidence, some of the key ones having been noted above, I agree with Burckhardt's emphasis on the political organization and power of the Christian Church even just prior to Constantine's Nicaea. I further suggest that, in raw terms of power and authority, the Church's sovereignty was not so much conceived at Nicaea as it was born. After the sixth century transfer of political control which was necessitated by Rome's fall at the hands of the barbarians, along with their antecedent imperial exodus to Constantinople, the Roman Church was essentially left alone to politically rebuild Europe with the, then, nascent universal power of the Frankish kings. Without wanting to over generalize, it is a

commonly known fact that for the intervening period between the two landmark events of Nicaea and Westphalia, the two universal powers of Church and Emperor shared the sovereign territorial control of Europe, and the relative intensity of such control varied concomitant to the relative clout of one *vis-à-vis* the other. Of course, in the latter half of this time period, it was not merely the emperor but a whole array of regional dignitaries representing geographical areas who participated in exercising power over both people and place. Yet for this research, the important observation is that the Church was a key component of sovereign rule in Europe from Pope Gregory the Great, 540-604 C.E., until, at least, the Peace of Westphalia in 1648.

How the idea of sovereignty originally developed and finally came to rest in the bosom of Christian Europe is an important consideration, and must be elaborated somewhat.

CHAPTER THREE

THE BIFOLD ETYMOLOGICAL IMPERATIVES OF EUROPEAN SOVEREIGNTY AS MORAL AND COERCIVE

Is sovereignty anything more than an issue of whether x has the “power” to rule over its own affairs? Further, if x has the power to rule, is there any consideration within the meaning of sovereignty about whether x *should* have this power or, concomitantly, whether x ’s rule is the best option in terms of utility? Perhaps another way to phrase the conundrum is to ask whether sovereignty consists of a moral element alongside its substantive function of ability to “rule” over a given body of people and territory. The further back one goes in the history of sovereignty as an idea, the more this moral component seems to show up.

The idea first arises with the Greek philosophers of the classical period. It then is imported into Roman ideology, then into the Catholic world view, and finally to European political theorists in the Early Modern and Modern period. The theory behind the development of sovereignty as an idea begins, like almost every other idea in Western thinking, with Greece’s three foremost philosophers: Socrates (469-399 B.C.E.), Plato (427-347 B.C.E.), and Aristotle (384-322 B.C.E.). For all three, their inquiry in to the best of all possible governance options was consumed with the desire for justifiable and efficient sovereignty, and they blatantly jettisoned the clumsy tyrannies of flawed oligarchy, pure democracy, and all anarchies in favour of a system which represented, if not the peoples wishes, then certainly their best interests. The “right to rule” here also

necessitated a “right” rule. Cicero (106-43 B.C.E.), as well, parroted Plato’s desire for the best of all possible outcomes in his own *Republic*, and he could reasonably be counted among those who saw things in terms of highest “good” or, dare we say, utility. The ideas of Plato were then co-opted by Saint Augustine (354-450 C.E.) into the doctrine of the Catholic Church, and ideas which had begun with the Greeks, such as “just war” and the role of rulers’ vis-à-vis the state, were fashioned to fit Augustine’s particular Christian world view.¹²⁸

Augustine’s ideas loomed large in the Catholic conscience and doctrine throughout the entire Middle Ages and beyond. His was an essentially Platonic understanding of the soul as the highest and most important aspect of human existence, and eventually this idea proved much to the detriment of respect for human life. This notion served as the basis for the philosophical justifications which ostensibly accounted for the crusades and inquisition. From Augustine’s time until the seventeenth century, wars were generally understood as something providential and in the hands of God. Fighting against heresy was just part of the grand struggle of the Church to insure its sovereignty over territories and Christian populations. Importantly for this research, I note here that it is with just such an ideology that Europe was made to endure the devastation of the Thirty Years War, (1618-1648 C.E.), in which the Christian Church, represented by its attendant and warring states, wiped out almost a third of the population of Europe.

It is important to understand, then, the social and philosophical context into which later writers on sovereignty were exposed. Key theorists such as Jean Bodin (1530-1596

¹²⁸ See James L. Cook, ““With whom he was in a state of just war...”: A Review of the Just War Tradition,” *Word & World* 24.1 (2004): 50; Stevenson, William R. Jr. *Christian Love and Just War: Moral Paradox and Political Life in St. Augustine and His Modern Interpreters* (Mercer University Press: Macon, 1987); John Langan, “The Elements of St. Augustine’s Just War Theory,” *The Ethics of St. Augustine*, ed. William S. Babcock (Scholars Press: Atlanta, 1991); etc.

C.E.), Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679), Samuel Pufendorf (1632-1694), and John Locke (1632-1704) all lived at a time of religious and societal upheaval in Europe. The latter three of these had lived during the tragic annihilation of those millions of individual human lives in the Thirty Years War. One can hardly be surprised, then, that Hobbes, for instance, gives us an appraisal of human life as one which is “nasty, brutish, and short,”¹²⁹ and one which requires a domineering government, his Leviathan, for the sake of order and peace. Again, are we surprised that John Locke suggested the need for a new kind of political order, given his historical context? Westphalia stands for more than a beginning for the notion of a sovereign state; it also marks the beginning of the end for the Augustinian era of political and religious philosophy. Under new theorists such as Locke and Immanuel Kant (1724-1804), protecting the lives and rights of citizens mattered greatly, and no more would political ideology be a *fait accompli* at the behest of Church doctrine. The Age of Enlightenment was dawning, and reason alone would now be the only cogent basis for authority. The political conversation which had started so altruistically with the Greek philosophers had, after having been co-opted by the Church for over twelve-hundred years, finally and forcibly been taken back by the enlightenment philosophers.

¹²⁹ Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994), 1.13.9, 76.

Socrates, Plato, and Sovereignty

The safest general characterization of the European philosophical tradition is that it
consists of a series of footnotes to Plato.
Alfred North Whitehead, *Process and Reality*

I think the most important thing to keep in mind when considering the influence of Plato and Socrates¹³⁰ on the history of political ideas and ideologies is the notion that *true* justice is a state of affairs wherein everyone in the *polis* works at the task which they are most suited to.¹³¹ In his famous dialogue with Glaucon and other interlocutors in Plato's *Republic*, Socrates concludes that each citizen ought to commit themselves to the task in their community which their *character* most suited them for.¹³² Socrates espouses this notion primarily because he is trying to lay out a formula for the ideal republic, the ideal state, if you will. Socrates is careful to separate the different characters of people into different tasks for the benefit of the city, for instance giving people with a more rudimentary character the more menial tasks, and those of a higher character the important tasks. In this way, Socrates is really instituting an unveiled system of class whereby order and functionality are the goals. He separates citizens into one of three classes: commercial, auxiliary, and the decision-makers.¹³³ The citizens in the commercial class do the farming, the trades, and all of the daily work which is required

¹³⁰ Socrates is the main character in most of the dialogues of Plato. Plato was a student of Socrates and scholars have never been able to say with authority how much of Plato's writings were the ideas of Socrates and which were merely those of Plato from the mouth of Socrates. See, for instance, Gregory Vlastos, *Socrates: Ironist and Moral Philosopher* (Cambridge: Cambridge University Press, 1991), 45-80. I refer, in this paper, to the ideas and recommendations of *Socrates*, vis-à-vis Plato, since that is the way Plato presented them, as the ideas of Socrates. Furthermore, both Aristotle and Cicero answer Socrates in their writings, but of course they are answering Socrates *in* Plato, often not even mentioning the latter. I have chosen not to break rank with such an ancient tradition.

¹³¹ Plato, *The Republic*, trans. Tom Griffith, ed. G.R.F. Ferrari, in *Cambridge Texts in the History of Political Thought*, eds. Raymond Geuss and Quentin Skinner (Cambridge: Cambridge University Press, 2000), 4.433a-433b, 127.

¹³² Plato, *The Republic*, 2000, 4.433a-433b, 127.

¹³³ Plato, *The Republic*, 2000, 4.440e-441a, 137.

by the needs of any given *polis*. The citizens of the auxiliary are essentially the military class, who guard the city and enforce the rules of the “decision-makers”. Lastly, these decision-makers, referred to as ‘philosopher kings,’ are those of the highest character who make decisions for the rest of the *demos*. According to Socrates, it is only to these latter figures that sovereign rule and the guardianship of state sovereignty could ever be entrusted.

For Plato’s Socrates, sovereignty, or the power to rule, would, ideally, only rest in the hands of those few who had the character and training to manage it.

There is no end to suffering, Glaucon, for our cities, and none, I suspect, for the human race, unless either philosophers become kings in our cities, or the people who are now called kings and rulers become, in the truest and most complete sense of the word, philosophers – unless there is this amalgamation of political power and philosophy, with all those people whose inclination is to pursue one or other exclusively being forcibly prevented from doing so. Otherwise there is not the remotest chance of the political arrangements we have described coming about – to the extent that they can – or seeing the light of day.¹³⁴

Socrates also understood most of humankind as being under a fundamental deception about what was good for them. It is this fact which gives impetus to his prescriptions for the ideal state, and how that state should be ruled. Importantly for the discussion of sovereignty, this idea of humans as debilitated and misguided beings made the move from voluntary to deliberate governance, which colors every vision of sovereign rule from Aristotle to Hobbes, one of necessity.

Socrates: ‘Picture human beings living in some sort of underground cave dwelling, with an entrance which is long, as wide as the cave, and open to the light. Here they live, from earliest childhood, with their legs and necks in chains, so that they have to stay where they are, looking only ahead of them, prevented by the chains from turning their heads. They have light from a distant fire, which is burning behind them and above them. Between the fire and the prisoners, at a higher level than them, is a path along which you must picture a low wall that has been built, like the screen which hides people when they are giving a puppet show, and above which they make the puppets appear.’

Glaucon: ‘Yes, I can picture that,’ he said.

¹³⁴ Plato, *The Republic*, 2000, 5.473d-473e, 175.

S: ‘Picture also, along the length of the wall, people carrying all sorts of implements which project above it, and statues of people, and animals made of stone and wood and all kinds of materials. As you’d expect, some of the people carrying the objects are speaking, while others are silent.’

G: A strange picture. And strange prisoners.¹³⁵

Strange, perhaps: yet seemingly not strange enough for all the philosophers who followed.

From Aristotle to Hobbes, in a virtually unbroken nexus of theoretical elaborations, the political theorists who weighed in on the idea of sovereignty have all embraced this Socratic tenet that people, chained as they are in a world of shadows, are ultimately unable, on their own merits, to realize democratic political stability and prosperity without some kind of coercive rule for their own good. For Socrates, citizens of the state must be forcibly governed – to wit, released from their chains – in order to bring them closer to a place of political functionality and reality. Yet for the citizens themselves, this enforced rule of trained governors would be a challenge, to say the least.¹³⁶ Socrates anticipated them railing against such a change with every fibre of their being.¹³⁷

In a similar way, Socrates viewed law as something which should be dictated so as to bring cohesion to the city.¹³⁸ The law, understood in this way, was not supposed to protect the freedom of people to do whatever they wished, but quite the opposite, it served to guide people into what was functionally justifiable for the state.¹³⁹ The “good” of the city as a whole was the all important consideration, being the catapulted ends

¹³⁵ Plato, *The Republic*, 2000, 7.514a-515a, 220.

¹³⁶ Plato, *The Republic*, 2000, 7.515c, 221: “Think what their release from their chains and the cure for their ignorance would be like. When one of them was untied, and compelled suddenly to stand up, turn his head, start walking, and look towards the light, he’d find all these things painful.”

¹³⁷ Plato, *The Republic*, 2000, 7.515c, 221.

¹³⁸ Plato, *The Republic*, 2000, 7.519e-520a, 226: “The law does not exist for the exclusive benefit of one class in the city. Its aim is to engineer the benefit of the city as a whole, using persuasion and compulsion to bring the citizens into harmony, and making each class share with the other classes the contribution it is able to bring to the community. The law is what puts people like this in the city, and it does so not with the intention of allowing each of them to ho his own way, but so that it can make use of them for its own purposes, to bind the city together.”

¹³⁹ Plato, *The Republic*, 2000, 7.519e-520a, 226.

which moulded any possible means. Socrates' insistence on manipulating both people and laws in his ideal sovereign regime is predictably at odds with the one political idea he believed was more fallacious than any other, democracy.

Socrates eschewed pure democracy as some kind of political mirage of an idea, since the citizens would be encouraged by laws to follow their individual desires and act in any way they pleased with little or no constraints.¹⁴⁰ Democracy, according to this Greek sage, arose when citizens revolted against an oligarchy that was negligently pre-occupied with the pursuit of becoming as rich as possible.¹⁴¹ He posits the oligarchs' negligence in their irresponsible and unrestrained practice of buying up wealth and property from the citizens – which was then distributed to friends of the oligarchs – as the *sine qua non* element which then causes these “stinging drones” to begin plotting a revolt against the wealthy in order to attain justice.¹⁴² Socrates then remarked:

And presumably it turns into a democracy when the poor are victorious, when they kill some of their opponents and send others into exile, give an equal share in the constitutions and public office to those who remain, and when public office in the city is allocated for the most part by lot.¹⁴³

But for Socrates this is a zero-sum game, since he understands democracy leading ultimately to tyranny. He writes: “This is the form of government, my friend, so attractive and head-strong, from which I believe tyranny is born.”¹⁴⁴ He sees this transformation occurring in idle, wealthy men who generally divide into two groups: those who politically lead the group vocally – these he calls drone bees with stingers – and then the others who follow silently – these, drone bees without stingers.¹⁴⁵ Not surprising, given

¹⁴⁰ Plato, *The Republic*, 2000, 8.555b-564c, 266-277.

¹⁴¹ Plato, *The Republic*, 2000, 8.555b, 266.

¹⁴² Plato, *The Republic*, 2000, 8.555d., 267.

¹⁴³ Plato, *The Republic*, 2000, 8.557a, 268.

¹⁴⁴ Plato, *The Republic*, 2000, 8.563e, 277.

¹⁴⁵ Plato, *The Republic*, 2000, 8.564b, 277.

his assessment of how oligarchy slips into democracy, and democracy to tyranny, Socrates calls on good law-givers to remove these groups as quickly as possible.

Socrates: His [the good law-giver] intention, ideally, should be to prevent their [the leaders of the portended uprising in a democracy] occurrence at all. If they do occur, he should make sure they are cut out, cells and all, as swiftly as possible.

Glaucon: Heavens, yes. And as completely as possible.¹⁴⁶

Notwithstanding this heavy-handed language in the context of a conversation about an ideal republic, it seems likely that Socrates believed that deliberate intervention by a sovereign power was not only beneficial, but necessary to secure the interests of the state. In this example, as well, the menace was within society, and not some foreign enemy. This kind of deliberative aspect for sovereign rule in the interest of the society would be a very real part of Aristotle's ideal image of rule, but also much later for, and perhaps more significantly, Augustine's comments on just war. The idea of swift and deliberative action by the sovereign in the interests of the state also seems very much a part of the nexus which has led to the modern idea of pre-emptive strikes.

In terms of sovereignty, the implicit inference that might fairly be made about Socrates' teaching is that such weighty political power should only be awarded those citizens who kept the best interests of the state as a whole as their *raison d'être*. The all important consideration for this Greek philosopher was capacity. If men and women were the best candidates to lead, they should be compelled to do so. By this reasoning, state sovereignty would only rest in the hands of those disciplined enough to control the power that was concomitant with their rule. Yet, the question remains, "why"? Why is there a need for a trained cadre or some ultimately capable candidate to make decisions? In one sense, this question can be answered by positing that Socrates' reasons "why" revolve

¹⁴⁶ Plato, *The Republic*, 2000, 8.564c, 277.

around considerations like the ones alluded to above, to allow the republic to function efficiently, for instance. Yet behind this cursory observation about his argument, it is clear that Socrates, as well as Aristotle after him, was aiming his prescriptions so as to cause people to arrive as close to the “good” as they possibly could. Hence, there seems implicit in Socrates’ strictures for the capacity to rule, a moral and deeply prescriptive element at its heart. For Socrates, it is not enough that kings or oligarchs, or even citizens, wield the largest share of political power in their states, it is whether that sovereign power is the product of the “good”. As to the fountainhead of this notion of “good,” like many of the theorists who ended up weighing in on sovereignty after Socrates, he too appealed to God.

Socrates eschewed the Greek pantheon of gods who, according to him, were portrayed as constantly getting into trouble, and seems to have openly accepted the idea of a *one* good God.

Glaucon: ... What about this question of patterns for stories about the gods? What should these patterns be?

Socrates: ‘Something like this, I should think. They should always, I take it, give a true picture of what god is really like, whether the poet is working in epic, or in lyric, or in tragedy.’

G: ‘Yes, they should.’

S: ‘Well then, isn’t God in fact good? Shouldn’t he be represented as such?’

G: ‘Of course’¹⁴⁷

S: [G]od, since he is good, could not be responsible for everything, as most people claim. Some of the things that happen to men are his responsibility, but most are not; after all, we have many fewer good things than bad things in our lives. We have no reason to hold anyone else responsible for the good things, whereas for the bad things we should look for some other cause, and not blame god.’

G: ‘I think you are absolutely right.’

S: ‘In that case,’ I said, ‘we should not allow Homer or any other poet to make such a stupid mistake about the gods, and tell us that two jars

Stand in the hall of Zeus, full filled with fates.

One of two holds good, the other ill. ...’¹⁴⁸

¹⁴⁷ Plato, *The Republic*, 2000, 2.379a, 64.

¹⁴⁸ Plato, *The Republic*, 2000, 2.379c-379d, 64.

In both these passages, Socrates talks about God in the singular and yet Glaucon refers to God in the plural. This bifurcation in Plato's *Republic* is common, and suggests that both Socrates and Plato may have been settled on the matter, notwithstanding Greek citizens of the fifth century who likely were not. The fact that Socrates is portrayed as understanding all things in the universe, in their essential nature, as having been created by one perfect God¹⁴⁹ is important to the discussion of sovereignty since it is this belief of an ordered existence which colors his insistence that both individuals and states need to strive towards the ordered good.

The true form of the "good" for Socrates is likened to a father,¹⁵⁰ and draws fair comparisons to the Christian father God; and concomitantly, Socrates' discussion of *the* child of God, or "the good", fits nicely with the Christian son of God. These observations are made to point out that the first, and perhaps most important, political philosopher in history had a cosmology which would fit, almost perfectly, with the doctrine of the Christian Church; and further that Plato's ideas were later adopted, almost wholesale, by the Roman Church in the writings of the person whose political philosophy had a decisive influence on every theorist of sovereignty in the Christian era, Saint Augustine.

Being the first extant account of a sophisticated and morally justified political order which spoke implicitly to the question of sovereignty, and one which later fit with Christian theology and cosmology, it is perhaps not surprising that so many of the ideas first launched by the *Republic* have been the basis of future elaborations on the theoretical construct of sovereignty. As suggested above, the moral element required for the sovereignty implied in Socrates' ideal republic was set forth in a very prescriptive

¹⁴⁹ Plato, *The Republic*, 2000, 10.597d, 316.

¹⁵⁰ Plato, *The Republic*, 2000, 6.506e-507a, 213.

way. Some later theorists, and certainly modern scholarship, have seemed content to discuss sovereignty, at least the most recent incarnation of public international law's *state* sovereignty, in terms of rule over citizenry, defined territory, and mere recognition from other states. By attributing sovereignty to the political construct of a state, the gain for the citizens of a state may be an ostensibly egalitarian notion that all people are somehow vested in the legal classification of "sovereign state" via the legitimacy of their political system, and thus allowing their country to relate more functionally with their international neighbours. Yet by attributing sovereignty to the state, it is also distancing the idea from the very people who it will ultimately affect, similar to how the legal construct of a corporation distances the actual decision makers from responsibility for its actions. If the political life of the state is one which is representatively sound and trusted by its citizens, it would seem that sovereignty could bridge the aforementioned responsibility gap; yet if the citizens are not represented fairly and consequently not the immediate force behind their state's dealings with other nations – as one might argue is the case with many of the world's "sovereign" nations – then the construct collapses under the weight of its own misrepresentative nature.

In perhaps a similar way, for Socrates, the notion that someone *did* rule had nothing to do with whether that sovereignty was legitimate. In fact, by offering this caution that careless oligarchy and democracy portended the ruin of societies, a prescient warning in so many ways looking back over the centuries, Socrates was very much grounding his prescriptive arguments in a moral ideal – the good – which was as much for the benefit of the individuals as it was for the state.

Socrates' insistence on a moral center for sovereign rule, along with his notion that humans are fundamentally flawed and in need of paternalistic political guidance, became aspects of prescriptive political discourse which resounded through the centuries with varying degrees of reception. The first person to tackle the awkward dissonance created by Socrates' ideal state vis-à-vis reality was also a very important political thinker in the nexus of ideas about sovereignty, Aristotle.

Aristotle and Sovereignty

Ἔχει δ' ἀπορίαν τί δεῖ τὸ κύριον εἶναι τῆς πόλεως.
Aristotle, *Politics*

As this comment from Aristotle suggests,¹⁵¹ who or what, exactly, should hold the sovereign power over a city or state is not something which was altogether clear, even during his lifetime in the fourth century B.C.E. While Socrates dialogues with interlocutors sketch sovereignty in an implicit way, Aristotle discusses the subject explicitly. In Aristotle's *Politics*, he engages in a discussion about the various systems of governance then in existence, and makes suggestions as to what might be the most efficient method. The topic of sovereignty comes up a number of times and I will discuss some examples of his usage of the word to better clarify where he saw its appropriate locus.

The word in Greek which Aristotle uses for sovereignty is κύριον (kurion). The meaning of this Greek word is 'to have power or authority over people'.¹⁵² So the

¹⁵¹ Aristotle, *Politics*, trans. H. Rackham, *The Loeb Classical Library*, eds. T.E. Page et. al. (London: William Heinemann, 1950), 3.6.1, 219: "But it is a matter of question what ought to be the sovereign power in the state."

¹⁵² Henry George Liddell and Robert Scott, compilers, *A Greek-English Lexicon*, rev. Henry Stuart Jones (Oxford: Clarendon Press, 1925), 1013.

question Aristotle is really asking is ‘who should have authority over the people in a city or state?’

In a very fundamental way, Aristotle first comments on sovereignty as something which vests in the city or state itself.

Observation shows us, first, that every city [*polis*] is a species of association, and, secondly, that all associations come into being for the sake of some good – for all men do all their acts with a view to achieving something which is in their view, a good. It is clear therefore that all associations aim at some good, and that the particular association which is the most sovereign of all, and includes all the rest, will pursue this aim most, and will thus be directed to the most sovereign of all goods. This most sovereign and inclusive association is the city [or *polis*], as it is called, or the political association.¹⁵³

We see here the debt to his instructor Plato in Aristotle’s mention of the “good” as both the ideal for people in general, but also as the goal for sovereignty. Here as well, Aristotle is pointing to the general aspect of a community’s sovereignty, but the further and more important consideration for this research is, again, who in the city will be the one, or ones, to execute such sovereignty. In other words, ‘where should sovereignty reside?’

Aristotle’s discussion of this question involves a consideration of the positive and negative aspects of democracies, oligarchies, and tyrannies. He sees problems with all of them on their own, in the same way Socrates did, but he does not end up at the same conclusion his teacher’s pedagogue did.

A difficulty arises when we turn to consider what body should be sovereign in the city. The people at large, the wealthy, the better sort, the one who is best of all, the tyrant. But all these alternatives appear to involve unpleasant results: indeed, how can it be otherwise?¹⁵⁴

[therefore]

It may perhaps be urged it is a poor sort of policy to vest sovereignty in a human being, rather than in law; for human beings are subject to the passions that beset their souls. But the law itself may incline either towards oligarchy or towards democracy; and what difference will the sovereignty of law then make in the problems which have just been raised?¹⁵⁵

¹⁵³ Aristotle, *Politics*, trans. Ernest Barker, rev. R. F. Stalley (Oxford: Oxford University Press, 1995), Book 1.1, 7.

¹⁵⁴ Aristotle, *Politics*, 3.10, 106.

¹⁵⁵ Aristotle, *Politics*, 3.10, 107.

So here we have the most important consideration for Aristotle, but as you can see, it comes with a fairly pointed rejoinder. In this latter passage, we see Aristotle suggesting his *sine qua non* locus for sovereignty, the *law*. The law does seem to be a more attractive option for vesting sovereignty, since, as the philosopher pointed out, it is not a dynamic entity, but is ostensibly well grounded. Yet his troubling of the laws inception, i.e. who will then write these laws, whether it be the *demos*, the *oligoi*, or even an *archontos tou*,¹⁵⁶ seems to bring the argument full circle and we arrive back at the question we began with: who makes these kinds of sovereign decrees that will govern a city or state?

Throughout the *Politics*, Aristotle is engaging in a kind of retroactive dialogue with Socrates about his own vision of an ideal republic. Socrates and Plato are referred to throughout the *Politics*,¹⁵⁷ and almost always in the context of Aristotle's answering the prescriptions of his ideological forebears. Aristotle's treatise was very much a response to his teacher's work, in much the same way we challenge and trouble the theses of others in our current context. He was challenging the ideal republic set forth by Socrates, although he accepted the basic tenet that striving for the "good" must continue to be the goal sought after in structuring the sovereign body within the sovereign state.

The task of a good lawgiver is to see how any city or race of men or society with which he is concerned, may share in a good life and in whatever form of happiness is available to them.¹⁵⁸

The best constituted city is the city which possesses the greatest possibility of achieving happiness.¹⁵⁹

Yet, notwithstanding the various points of symbiosis, there is dissonance between the two philosophers. Aristotle sees problems with the strictures set forth by Socrates.

¹⁵⁶ ...the people, the oligarchs, or even a 'chief ruler' or king.

¹⁵⁷ Plato 15, Socrates 21.

¹⁵⁸ Aristotle, *Politics*, 7.2, 257.

¹⁵⁹ Aristotle, *Politics*, 7.13, 281.

I have in mind here the idea, which Socrates takes as his premises, that the greatest possible unity of the whole city is the supreme good. Yet it is obvious that a city which goes on becoming more and more of a unit, will eventually cease to be a city at all. A city, by its nature, is some sort of plurality.¹⁶⁰

This notion that cities are pluralities, and that any accounting for sovereignty must deal with this reality, leads Aristotle to a different conclusion than Socrates. Aristotle does not distrust the aggregate of citizens in the way that Socrates does. In fact, he asserts that a great deal of utility might be had by allowing them to, as a body, serve as decision-makers in some cases.

The suggestion that the people at large should be sovereign rather than the few best men would [seem to present problems which] need resolution, and while it contains some difficulty it perhaps also contains some truth. There is this to be said for the many: each of them by himself may not be of a good quality; but when they all come together it is possible that they may surpass – collectively and as a body, although not individually – the quality of the few best, in much the same way that feasts to which many contribute may excel those provided at one person's expense.¹⁶¹

Yet, as indicated, the problems of majority rule are many, some of which Socrates had indicated and which were alluded to above. Aristotle moves the question beyond the bounds of citizenry set by Socrates and introduces the novel concept of making the law a foundation upon which any kind of ideal scheme of governance might rest.

[There is] one conclusion above all others. Rightly constituted laws should be [the final] sovereign; but rulers, whether one or many, should be sovereign in those matters on which law is unable, owing to the difficulty of framing general rules for all contingencies, to make an exact pronouncement. But what rightly constituted laws ought to be is a matter that is not yet clear; and here we are still confronted by the difficulty stated at the end of the previous chapter. Laws must be good or bad, just or unjust in the same way as the constitutions to which they belong. The one clear fact is that laws must be laid down in accordance with constitutions; and if this is the case, it follows that laws which are in accordance with right constitutions must necessarily be just, and laws which are in accordance with perverted constitutions must be unjust.¹⁶²

When considering the major revolutionary constitutional projects of, for instance, France, England, and the United States, over the last three hundred years, it is remarkable how

¹⁶⁰ Aristotle, *Politics*, 2.2, 39.

¹⁶¹ Aristotle, *Politics*, 3.11, 108.

¹⁶² Aristotle, *Politics*, 3.11, 111-112.

they all seem to adhere relatively closely to this set of recommendations based on a compromise which was proposed over two millennia ago. Beginning with the modern period, at the end of the era of religion's dominance over the political and legal affairs of Europe, and coming right into our own day, this idea from Aristotle that law should be cast in accordance with a just constitution and that only in cases wherein the law cannot address matters should a ruler/court be able to intervene, is strikingly familiar to most models of governance now operating in the western world.

Notwithstanding the degree to which Aristotle departed from Socrates in his recommendations for the ideal state, there are a number of areas where he deferred to the elder teacher. Likely the most crucial part of the Socratic framework of governance which Aristotle adopted to his own purposes was that even though laws should be the "sovereign", in the strict sense of the term, the person who drafted them must be of the highest character. In some matter of speaking, then, Aristotle was not making such a drastic shift in schema after all, since he still pines for the most qualified decision-making actor/s, similar to the prescriptions of Socrates. Aristotle allowed that black letter law could not always account for shifting contingencies over time, and thus his focus on law's sovereignty was a limited sovereignty, writ large.¹⁶³ He also asserted that one person could not always be relied on to make decisions which did not engage the law, and so required another independent source of authority.

It is surely clear that [the one best man] must be a lawgiver, and there must be a body of laws, but these laws must not be sovereign where they fail to hit the mark – though they must be so in all other cases. But in cases which cannot be decided at all, or cannot be decided properly, by law, should rule be exercised by the one best man or by the whole of the people? [Given the fact that one person, even if good, could be more easily corrupted, or more wholly

¹⁶³ Aristotle, *Politics*, 3.15, 124.

corrupted, than a group of good people], [i]s not the balance clearly in favour of the greater number?¹⁶⁴

Yet, Aristotle is not suggesting the demos here, but rather a group of equally “good” people as the fail-safe for ultra-statutory decisions.

As much as Aristotle wants to distance himself from Socrates’ at many points, he is inextricably attached to the notion that “goodness,” as a character trait of the ruling class, is absolutely essential. On the issue of who should be sovereign, Aristotle takes the question further by trying to strike a balance between the sovereignty of the law and the sovereignty of the best trained human agency. He continues to insist on a trained cadre or person to make those ultra-statutory decisions when the written law cannot account for a given situation, so that the highest good may result from a particular exercise of sovereign power.

When attempting to summarize some of his many thoughts on the subject, Aristotle makes a very strong statement about sovereignty in general which would seem to negate “one person” rule, and perhaps even presents problems for our modern day “democracies.” He writes:

Now what I have said makes it clear that among men who are equals and peers it is neither expedient nor just that one person should be sovereign over all. This is true where there are laws, or whether there are no laws and the one man is a good man ruling over good men, or a band man ruling over bad men, and it is even true when the one man is of superior virtue,....¹⁶⁵

The last part of this passage about the person of “superior” virtue, counterintuitive as it appears, is actually Aristotle referring to an argument he made previously in Book 3 of the *Politics* whereby he notes that inasmuch as law pertains only to equals, people of higher virtue in this context are really not part of the state, but gods, and a law unto

¹⁶⁴ Aristotle, *Politics*, 3.15, 124-125.

¹⁶⁵ Aristotle, *Politics, Aristotle's Politics and Athenian Constitution*, ed. & trans. John Warrington (London: J.M. Dent & Sons Ltd., 1959) 3.D.2, 99.

themselves, and hence the ancient practice of the Greeks to ostracize (banish) people who were too influential.¹⁶⁶ Aside from this expostulatory curiosity, Aristotle's final thoughts on sovereignty challenge the religiously grounded tradition of monarchies, or one person rule: and this seems a notion which was a forerunner of the enlightenment tradition and an idea which is in line with the general constitutional development of most Western states. However, sovereignty being an idea which has been transferred and transformed from finding its locus in people, into a characteristic of the state, may now give rise to criticism based on Aristotle's claims in that such a framework all sovereignty devolves on one entity, and in many cases the actual decision-making power of these states rests with only a single person or small group of people: and, theoretically, this puts us back at the beginning of the inquiry.

Aristotle's treatment of sovereignty was borne out of a response to Plato's ideal republic. In the same way Plato explained the impetus of the "good," so Aristotle did as well in the existence of one God. It is enough for this research to simply note in passing that Aristotle's teleology and cosmology in this regard was the same. What Aristotle brings to the question of sovereignty which is unique is his insistence on the role of written law in the expression of sovereignty within a society. Written law, articulated by a "good" king, and then backed up by the fail-safe of ultra-statutory decision making power in the hands of either that same good king or a small group of good persons, is very near this philosopher's ideal model of sovereign state governance.

¹⁶⁶ Aristotle, *Politics*, 1959, 3.C, 89.

The Greeks and Sovereignty in Summary

For, to speak in the phrase of writers upon politics, we may observe in the republic of dogs, which in its original seems to be an institution of the many, that the whole state is ever in the profoundest peace after a full meal; and that civil broils arise among them when it happens for one great bone to be seized on by some leading dog, who either divides it among the few, and then it falls to an oligarchy, or keeps it to himself, and then it runs up to a tyranny.

Jonathan Swift, *Battle of the Books and Other Short Pieces*, 1697

The writings of Plato and Aristotle leave little doubt that sovereign power should only transfer to a person or small group of people who have been sufficiently trained in the “good”. This notion of good is centered in their one God, quite in opposition to the Greek pantheon of gods, upon which Socrates regularly inflicts criticisms amounting to outright dismissal. Both Aristotle and Plato prescribed that sovereign power should involve a moral imperative, that the one or few who rule must serve the best interests of the whole. Thus, seemingly, any kind of government whose rule amounts to appeals to the baser desires and passions should be written off as illegitimate.

Of course this kind of moral requirement cancels out the sovereign power of past rulers such as Henry VIII of England, King Louis XIV of France, to name just two, and perhaps, given the severity of the stricture, a vast number more right up to our present age. The problem that rulers such as these and many others of their ilk present to the discussion of the Greek understanding of sovereignty is that while we may point to facts such as inter-state acknowledgement, defined territory, and a rule supported by the citizens, as bearing out state sovereignty under these heads state, none of them would have been acceptable according to our two Greek philosophers. All of them ruled in such a way as to allow their “baser passions” to influence their decision making.

Yet, it must be acknowledged that, initially, Socrates was speculating on the prerequisites of an ideal state, and yet with Aristotle it seems that a great deal of

practicality was imported into the discussion, perhaps with the aim of making the ideal, practical. Aristotle had “modified” the Socratic vision of who should be sovereign. Besides Aristotle’s emphasis on the shared role for law in sovereign governance, I suggest that one of the most important precedents which he set in the ongoing discussion concerning the configuration of the state was the practice of continuing to adapt Plato’s Socratic vision to a workable version in reality.

Cicero: A Greco-Roman Vision of Sovereignty

...in a matter affecting the state, I could not but mark the inspired words in the writings of my master Plato “as are the leaders in a commonwealth, so are the other citizens apt to be.”

Cicero, *Letter to P. Lentulus, Imperator*
Rome, December, 54 B.C.

Perhaps no one was more aptly placed to bring the Socratic vision along in Western thinking than the Roman statesman and lawyer, Marcus Tullius Cicero (106-43 B.C.E.). Cicero was the conduit through which Plato was presented to Augustine, the latter of whom would be the most influential political philosopher of the Middle Ages. The most important role Cicero served in terms of the history of European political theory was to imbue his own writings with the philosophy of the Greeks. This led to a Latin legal philosophical tradition which, most pointedly in the thought of Augustine, employed the basic questions and propositions of the Greek philosophers as a baseline for all subsequent inquiries into state governance.

Cicero lived during the end of the Roman Republic and, in light of the question at hand, was an ardent admirer and disciple of Greek philosophy, with an outspoken preference towards presenting himself in the literary clothes of Plato.¹⁶⁷ Two of Cicero’s

¹⁶⁷ Cicero, Cicero to L. Papirus Paetus, Rome, Rome, July, 45 B.C.,” *Cicero: The Letters to His Friends*, trans. W. Glynn Williams, vol. 2, The Loeb Classical Library, eds. T.E. Page et al. (London:

works, *On the Commonwealth* and *On the Laws*, are somewhat mirror reflections of Plato's *Republic* and *Laws*, respectively.¹⁶⁸ Notwithstanding the veneration which Cicero pays to Plato in style and scope, he also fundamentally disagreed with the Socratic view of government as unrealistic.¹⁶⁹ This, of course, was part of the impetus for Aristotle's discussion of state governance as well.

Cicero emphasizes the need to keep theorizing about states as accessible to real world practicalities as possible: for instance using Rome's historical political development as a template for his discussion of state governance rather than using ideal formulations.¹⁷⁰ Yet even though he moves away from the Socratic vision of an *ideal* state, Cicero, like Aristotle, was answering the questions raised in Plato's *Republic* in his own writings, and he regularly acknowledges this epistemological relationship using flattering terms. He writes:

That great man, the greatest of all writers, chose his own territory on which to build a state to suit his own ideas. It may be a noble state, but it is totally alien to human life and customs.¹⁷¹

Cicero assuages the awkwardness of Socratic ideals by noting their theoretical nature, and does not take away from their essential helpfulness philosophically. In his *On the Commonwealth*, he pushes the great conversation away from mere speculation and asserts that to be imbued with philosophical learning alone is one thing, but far better for a person to have that learning combined with an active civic or political life; in fact if one

William Heinemann Ltd, 1965), vol 2, 9.22.5, 271: I am gratified that, in arguing with me, there is no word you dare not use. As for me, I maintain, and ever shall maintain, as has always been my habit, the modest reserve of Plato....

¹⁶⁸ James E.G. Zetzel, *Introduction, Cicero: On the Commonwealth and On the Laws* (Cambridge: Cambridge University Press, 1999), xiii-xiv.

¹⁶⁹ Zetzel, *Introduction, Cicero: On the Commonwealth and On the Laws*, xi.

¹⁷⁰ Cicero, "On the Commonwealth," *On the Commonwealth and On the Laws*, ed. James E.G. Zetzel (Cambridge: Cambridge University Press, 1999), 2.21-2.22, 39.

¹⁷¹ Cicero, *Commonwealth*, 2.21, 39.

had to choose, he would say, definitely the latter.¹⁷² Cicero, though, in another place credits Plato as the catalyst whose advice led him to his own prescriptions on being a servant of the state.¹⁷³ Cicero himself served political roles within the Roman republic, and so here we have perhaps, another impetus for his insistence on an active political life. In light of this observation, it may be fair to say that Cicero saw himself as fulfilling the role of philosopher king which Socrates and Plato never attained. Certainly, when reading the text of this work, Cicero's tone clearly conveys the notion that 'while they had speculated, he had acted'.

In terms of how Cicero understood sovereignty, it seems he kept fairly close to the Socratic prescriptions¹⁷⁴ without really giving the larger dialogue any new theoretical contributions. He remarks:

Those who propose to take charge of the affairs of government should not fail to remember two of Plato's rules: first, to keep the good of the people so clearly in view that regardless of their own interests they will make their every action conform to that; second, to care for the welfare of the whole body politic and not in serving the interests of some one party to betray the rest.¹⁷⁵

The most notable way he accents the discussion, besides the transfer of it in his own voluminous works, was in his tendency towards praxis in his own life, thus giving some kind of real world basis for his commentary on the commonwealth. Related to this was

¹⁷² Cicero, *Commonwealth*, 3.5, 61.

¹⁷³ Cicero, *Cicero: De Finibus Bonorum Et Malorum*, trans. H. Rackham, *The Loeb Classical Library*, eds. T.E. Page et al. (London: William Heinemann, 1931), 2.14, 133: ... as Plato puts it in his letter to Archytas, man was not born for self alone, but for country and for kindred, claims that leave but a small part of him for himself.; *De Finibus Bonorum Et Malorum*, roughly translated Concerning the Boundaries of Good and Evil.

¹⁷⁴ Cicero, "Cicero to Quintus, Rome, end of 60 B.C." *Cicero: XXVIII Letters to Quintus, Brutus, and Others*, trans. Glynn Williams et al., *The Loeb Classical Library*, eds. E.H. Warmington et al. (London: William Heinemann Ltd, 1972), 1.1.10, 419: And indeed Plato, that foremost of men in genius and learning, though that states would only then be prosperous when learned and wise men began to rule them, or when those who ruled them devoted all their mental energies to learning and wisdom. He was evidently of opinion that this combination of power and wisdom would be the salvation of states – a blessing which some day perhaps will befall our whole Republic....

¹⁷⁵ Cicero, *Cicero De Officiis*, trans. Walter Miller, *The Loeb Classical Library: Cicero XXI*, eds. Jeffrey Henderson and G.P. Goold (London: Harvard University Press, 2001), 1.24, 87.

the fact that he faced the implication of the Greek philosophers that citizens must be coercively directed by laws and punishments which would bring about the best form of government in the republic.

[T]hat citizen, who through his formal authority and the punishments established by law compels everyone to do what philosophers through their teaching can persuade only a few people to do, is to be preferred even to the teachers who make those arguments.¹⁷⁶

Socrates prescribed coercion as an aspect of his sovereign rule, and while Aristotle emphasized the same need, he also asserted the joint need for the use of coercion to be subject to a written code of law. Cicero gave traction to both these ideas in his own political career.

Cicero took seriously the Socratic idea that too much liberty would lead to outright tyranny. As Socrates believed in state order, so did Cicero: and it is clear by the actions of his political life that this Roman statesman believed the most stringent methods were sometimes required to preserve the sovereign state. His well known prosecution of a team of conspirators, led by Lucius Catiline, who were planning to overthrow his precious Republic, led to the Senate's passing a death sentence on them. Cicero attended their execution, and if one considers the aforementioned prescription of Socrates to "make sure they are cut out, cells and all, as swiftly as possible,"¹⁷⁷ one does not have to look very far in Plato's writings to see where Cicero found an impetus for approving of this rough justice.

For Cicero, as well, there arose this central connection between the sovereign power and the "good," but Cicero often used the term "virtue". Ultimately, for this Roman

¹⁷⁶ Cicero, *Commonwealth*, 1.2, 3.

¹⁷⁷ Plato, *The Republic*, 2000, 8.564c, 277.

republican consul, the apogee of *virtue* was the governance of states;¹⁷⁸ it was praxis combining Greek wisdom with the Stoic Roman work ethic. In terms of Cicero's teleology and cosmology, they definitely had some connection to the Greeks, but his emphasis in this area really lay with the traditional Roman religions. For instance, he breaks ranks from the biting criticisms of Socrates on the 'bickering' gods, and prescribes a strict adherence to those belief systems which each person had inherited from their ancestors,¹⁷⁹ regardless of the deities involved. Notwithstanding this, Cicero still clings to the Socratic notion of a singular "divine mind" which was the source of *reason* and of the "good".

Reason existed, derived from nature, directing people to good conduct and away from crime; it did not begin to be a law only at that moment when it was written down, but when it came into being; and it came into being at the same time as the divine mind. And therefore that true and original law, suitable for commands and prohibitions, is the right reason of Jupiter, the supreme god.¹⁸⁰

The basic idea which is confirmed by this comment is the fact that what is good is eternal.¹⁸¹

According to this former Roman Consul, when people reached maturity, this reason or good might blossom in the mind of the wise citizen, and it is to these few citizens who Cicero is willing to commend sovereign power. In this way, Cicero puts sovereign control in the same place as Socrates and Aristotle, in the hands of a small group of "wise" citizens.¹⁸²

¹⁷⁸ Cicero, *Commonwealth*, 1.2, 3.

¹⁷⁹ Cicero, *Laws*, 2.19-2.21, 136-137.

¹⁸⁰ Cicero, *Laws*, 2.10, 133.

¹⁸¹ Cicero, *Laws*, 2.11, 133.

¹⁸² Cicero, *Commonwealth*, 1.51-1.53, 22-23.

Cicero definitely saw himself as one of these wise citizens,¹⁸³ and his active political life bore out his commitment to the practice of his own prescriptions. Sadly, although he had done a great deal to re-kindle the Roman Republic which had stood for over four hundred years, his involvement in the prosecution of those who were executed ultimately led to his exile from Rome. This headstrong act dogged Cicero for his remaining days and he was declared an enemy of the state and finally put to death by the order of the Second Triumvirate (43-33 B.C.E.), consisting of Mark Antony, Marcus Lepidus, and Gaius Octavianus. Augustine writes:

This youthful Caesar [Augustus] was favoured by Cicero, in order that his power might be nurtured in opposition to Antony. So blind and unable to foresee the future was Cicero that he hoped that, when the dominion of Antony had been repulsed and crushed, Augustus Caesar would restore liberty to the commonwealth. But when that young man whose honour and power Cicero had promoted had made a kind of alliance with Antony and subdued to his own rule that very liberty of the commonwealth on behalf of which Cicero had issued so many warnings, he allowed Cicero himself to be slain.¹⁸⁴

Cicero died at the crossroads between Rome's republican era and its infamous imperial age. Cicero died trying to preserve the former and stave off the latter.

Perhaps a few words from his own pen would be the best way to close these few observations, along with the suggestion that the following sentiment concerning Plato could have been as easily been applied to that peerless Roman statesman himself.

I <will treat Plato> in the same way as he treats Homer: he sends him out of the city which he invented for himself, decked in garlands and covered in perfumes.¹⁸⁵

¹⁸³ Cicero, "M. Cicero to P. Lentulus, Imperator, Rome, December, 54 B.C." *Cicero: The Letters to His Friends*, vol. 1, trans. W. Glynn Williams, *The Loeb Classical Library*, eds. T.E. Page et al. (London: William Heinemann Ltd, 1965), 9, 71: And so it follows among wise citizens – and a wise citizen is what I wish both to be and to have the credit of being – there ought to be a complete change both of opinion and purpose. For that same Plato, whose teaching I earnestly endeavour to follow, gives us this injunction – "to assert yourself in politics only so far as you can justify your measures to your fellow citizens; for it is wrong to use violence to your country as to one of your parents." (47-89).

¹⁸⁴ Augustine, *The City of God Against the Pagans*, trans. R.W. Dyson (Cambridge: Cambridge University Press, 2001), 3.30, 139-140.

¹⁸⁵ Cicero, *Commonwealth*, 4.5c, 81.

Augustine's Ideological Legacy Pertaining to Sovereignty

As alluded to above, in the nexus of thinkers who ultimately shaped Europe's political and legal theory, and following Cicero some four hundred years after, it is to Augustine of Hippo (354-430 C.E.) that the gauntlet of political philosophy was then passed. Cicero had lived during the fall of the Roman Republic, and Augustine lived at the end of the Roman Empire of the West. Both men wrote in the context of collapsing Roman polities and this fact should be lost on no one wishing to understand some of the contextual reality pursuant to their writings. In some manner of speaking, they were both apologists of a certain kind. Cicero was the ultimate apologist for the Roman Republic, and both his works and life evidence a desperate wish to keep Romans on the course navigated by their ancestors for some four-hundred years. Augustine, at the end of more than four-hundred years of Empire, lived to see Rome sacked by the Visigoth Alaric in 410 C.E. Augustine comments on it in passing:

...I think I have said enough in the first book of the City of God to blunt the teeth of those who by attributing the destruction of the barbarians, which Rome has recently suffered, to Christian causes even hurl this abuse, that Christ did not come to the aid of His followers.¹⁸⁶

The fact that Augustine's Roman society was collapsing right before his eyes is an important contextual variable which may go some distance to explaining why he wrote in the premeditated way that he did. With the Latin world on the brink of disaster, it is likely that he saw his own writings as a way to vouchsafe Christian teaching for future generations – and if the Middle Ages are any indication, just such an outcome was the

¹⁸⁶ Augustine, *The Care to be Taken for the Dead*, trans. John A. Lacy, *Saint Augustine: Treatises on Marriage and Other Subjects*, trans. Charles T. Wilcox et al., ed. Roy J. DeFerrari, *Writings of Saint Augustine*, vol. 15, in *The Fathers of the Church: A New Translation*, vol. 27, ed. Roy Joseph DeFerrari et al. (New York: Fathers of the Church, 1955), 3, 354.

result.¹⁸⁷ Unlike Cicero, therefore, Augustine did not write to justify a failing Roman enterprise, but instead to push the Christian religion forward as the one saving regime which could not only survive the barbarians, but indeed convert them and thus expand the borders *not* of the empire, but of the city of God on earth. He writes:

We rely... on the Holy Scriptures, wherein a dominion extending to the ends of the earth among all nations is promised as the heritage of Christ....¹⁸⁸

Augustine's Latin education meant that he would have likely memorized most, if not all, of Cicero's writings. He would have had a finger-tip grasp of the all the important works, and consequently he was also very familiar with Plato's writings as well. One of the major results of his reliance on Cicero is the commonly known fact that with Augustine we are dealing with an avowed Platonist. While Cicero had been a member of a more or less pantheistic society, Augustine is the first major political philosopher of the long, arduous, and *monotheistic* Christian era. It makes perfect sense that Augustine chose Plato as the *sine qua non* philosopher of the Greeks, because it is with Plato's Socrates where the idea of a single God is emphasized at the expense of the many bickering gods of legend and lore. In one sense, then, Augustine brings at least part of the great conversation back to a Platonic perspective and, importantly, Augustine sees Plato as a precursor to Christ. Origen of Alexandria 185-254 C.E. promulgated much the same teaching, and before him Clement of Alexandria 150-216 C.E. had espoused a similar perspective, but these were Christian teachers of a religion persecuted and killed by the Roman Empire, while Augustine was a Christian teacher of a Roman Empire whose

¹⁸⁷ John Neville Figgis, *The Political Aspects of S. Augustine's 'City of God'* (Gloucester, Mass.: Peter Smith, 1963), 100.

¹⁸⁸ Augustine, *Letter LIII* (A.D. 400), *Letters of St. Augustin*, trans. J.G. Cunningham, *The Confessions and Letters of St. Augustin with a Sketch of His Life and Work*, vol. 1, 1st ser., ed. Philip Schaff, *A Select Library of the Christian Church: Nicene and Post-Nicene Fathers* (Edinburgh: T & T Clark, 1886; Peabody: Hendrickson: 1995), 53.6, 299.

official religion *was* Christianity. The two contexts could not be more different, yet the adoption of Platonism into Christianity was a process which characterized both eras.

Augustine saw himself as, foremost, a Christian philosopher.¹⁸⁹ His most famous written work, *The City of God*, bears out his Christian-Platonic ideology in robust fashion, and it serves this research, first, by showing the intimate connection his own ideas had to the Greek philosophers, most especially in the writings of Plato.

Socrates, then, is remembered as the first to direct the entire effort of philosophy towards the correction and regulation of morals [as opposed to predecessors who studied the physical world] ...he believed that the first and highest causes exist in nothing but the will of the one true and supreme God.¹⁹⁰

But among the pupils of Socrates the one who shone with a glory so illustrious that he entirely eclipsed all the others, and not, indeed, unworthily, was Plato.¹⁹¹

If, therefore, Plato has said that the wise man is an imitator, knower and lover of this God, and is blessed by participation in him, what need is there to scrutinise other philosophers? No one has come closer to us [Christians] than the Platonists.¹⁹²

In truth, no one had come closer to the Jewish/Christian perspective than Socrates, Plato, and Aristotle, all of whom vouchsafed that the ancient array of gods should be jettisoned in favour of only one God. Yet to pretend that Augustine chose Plato out of all the philosophers on this basis alone is likely not correct. Augustine was quite literally raised on the teachings of Cicero, and it is Cicero's veneration and repetition of Plato that might better explain the adoption of the Greek master's ideas by the young Latin scholar. The fact that he was already a Platonist before his Christian conversion must also say something to his choice as well, having already been ideologically vested in the doctrines for some time. It is a very important aspect of Augustine's theology, teleology, and

¹⁸⁹ See generally John Neville Figgis, *The Political Aspects of S. Augustine's 'City of God'*, 1963.

¹⁹⁰ Augustine, *City of God*, 8.3, 314-315.

¹⁹¹ Augustine, *City of God*, 8.4, 316.

¹⁹² Augustine, *City of God*, 8.5, 318.

cosmology generally that the Christian God is also the Platonic God.¹⁹³ One can imagine, based on the comments from Socrates above on the nature of God and the “good,” just how much of a perfect fit it must have seemed to Augustine as he interweaved his new found Christian faith with the philosophy he had been taught as a student of the Latin school.

Augustine had also known of Aristotle’s work but, perhaps surprisingly, only mentions him a few times in passing within the context of his *City of God*.

Aristotle, a pupil of Plato, a man of outstanding intellect and, though certainly inferior to Plato in eloquence, easily the superior of many others, founded the Peripatetic school...¹⁹⁴

For Aristotle says that the soul is a fifth kind of body, and Plato says that it is not a body at all. If it were a fifth kind of body, then certainly it would be above the rest; and if it is not a body at all, then so much the more does it rise above everything else. ...For the time being, the natural substance of earthly bodies is able to restrain the soul here below; but will not the soul eventually be able to lift up the earthly body on high?¹⁹⁵

Augustine’s use of Aristotle is minimal and when he is referred to, it is only by way of contrast. The latter of the passages above, though, wherein Augustine compares the assertions of Aristotle to Plato, betrays a very important ideological conviction of Augustine’s. As a Christian philosopher, Augustine adopted the Platonic notion that there is no higher entity pertinent to an individual’s existence than the soul. The body, conversely, was a source of sin, carnality, and baseness. For Augustine, the body was an anchor to the world and sin, whereas the soul was an anchor to God. Notice in the passage how Augustine characterizes the body as “restraining” the soul. It is exactly this ideological standpoint which the Roman church subsequently adopted, and which played

¹⁹³ By reason of his immutability and simplicity, the Platonists have understood that He has made all things, and that he Himself could have been made from none of them. Augustine, *City of God*, 8.6, 321.

¹⁹⁴ Augustine, *City of God*, 8.12, 329.

¹⁹⁵ Augustine, *City of God*, 22.11, 1137-1138.

out in such horrific ways throughout the Middle Ages, right up until at least the seventeenth century and the time of the Thirty Years' War.

One of the most infamous examples of how far Augustine's platonic theory had reached into the psyche of Catholic Europe is found in the oft-quoted words of Arnau Amalric (ca. ? – 1225 C.E.), who served as a papal legate for Pope Innocent III – Pope from 1198-1216. During the Albigensian Crusade, a military campaign aimed at wiping out a group of people who were deemed heretics – Cathars, who, among other things, believed in a dualist conception of the universe, somewhat akin to Gnosticism – and who were living in the French province of Languedoc, a crusader asked this legate how to distinguish between Catholics and Cathars when fighting the ensuing battle: to which Amalric replied, “Kill them all. God will surely know which are his.”¹⁹⁶ While this may be an extreme example of the kind of repercussion felt throughout the Middle Ages by those victims at the receiving end of the Catholic sword, this and many other profoundly ill-conceived directives¹⁹⁷ had obvious connections to the ideology of Augustine found in the *City of God*. In a related observation, John Langan writes that “Augustine's insistence on the power and the mystery of God's providence leads to a kind of agnosticism about

¹⁹⁶ “*Caedite eos. Novit enim Dominus qui sunt eius*,” [this author's translation, roughly: “Slaughter them! The Lord knows indeed which are his.”] Caesarii, Heisterbacensis Monachi, *Dialogus Miraculorum*, trans. Josephus Strange, vol. primum (Coloniae: Sumptibus J. M. Heberle [H. Lempertz & Comp.], 1851), 5.21, 302; see also another fuller translation by V. Von E. Scott and C. C. Swinton Bland: When they [Dukes, Counts, and other soldiers] discovered, from the admissions of some of them, that there were Catholics mingled with the heretics, they said to the abbot, ‘Sir, what shall we do, for we cannot distinguish between the faithful and the heretics.’ The abbot, like the others, was afraid that many, in fear of death, would pretend to be Catholics, and after their departure would return to their heresy, and is said to have replied: ‘Kill them all; for the Lord knoweth them that are His (2 Tim. ii. 19)!’ and so countless numbers in that town were slain.: Caesarius of Heisterbach, *The Dialogue on Miracles*, vol. 1 of 2, trans. H. Von E. Scott and C. C. Swinton Bland (London: George Routledge & Sons, Ltd., 1929), 5.21, 345-346.

¹⁹⁷ Only one of a multitude of recorded accounts of the Roman Church's penchant for slaughtering people on the pretence of “heresy” is found in, Caesarius of Hesterbach, *The Dialogue on Miracles*, 5.22, 347-351 (Early 13th century, priests and laymen burned at the stake in Paris for heresy);

the value of what human beings do and suffer in the course of the war....”¹⁹⁸ Suffice it to say, the Albigensian catastrophe and many others like it were partly the result of Augustine’s philosophy based on the ideas of Plato, in so far as human bodies were interpreted to be not half so important as the souls which occupied them.

Augustine’s Just War: Impinging on Sovereignty

Very much connected to this philosophy which devalued the body, and likely Augustine’s most infamous contribution to international law, was his conversation in the *City of God* on “just war”. While it is clear that Augustine was not systematically prescribing a doctrine of just war,¹⁹⁹ his comments eventually resulted in exactly that in the writings of Thomas Aquinas.²⁰⁰ Robert Holmes observes that “[v]irtually every major just war theorist in the Western tradition builds upon his work.”²⁰¹ Yet as this research will demonstrate, Augustine was not the originator of the concept, and in his infamous discussion of *justum bellum* in his *City of God*, he implies this in his opening sentence.

But the wise man, they say, will wage just wars. Surely, however, if he remembers that he is a human being, he will be much readier to deplore the fact that he is under the necessity of waging even just war. For if they were not just, he would not have to wage them, and so there would then be no wars at all for a wise man to engage in. For it is the iniquity of the opposing side that imposes upon the wise man the duty of waging wars; and every man certainly ought to deplore this iniquity since, even if no necessity for war should arise from it, it is still the iniquity of men.²⁰²

¹⁹⁸ Langan, John “The Elements of St. Augustine’s Just War Theory,” in *The Ethics of St. Augustine*, William S. Babcock, ed. (Scholars Press: Atlanta, 1991), 172.

¹⁹⁹ Alain Epp Weaver, “Unjust Lies, Just Wars?: A Christian Pacifist Conversation with Augustine,” *Journal of Religious Ethics* 29.1 (2001): 51-78: Augustine’s discussion of the just war was *ad hoc* and unsystematic.... (52).

²⁰⁰ Thomas Aquinas, *War, Summa Theologica, Aquinas: Selected Political Writings*, trans. J.G. Dawson, ed. A.P. D’Entrèves (Oxford: Basil Blackwell, 1974), 15.40.1, 159.

²⁰¹ Holmes, Robert L., *Just War Theory*, ed. Jean Bethke Elshtain (New York: New York University Press, 1992) 197.

²⁰² Augustine, *City of God*, 19.7, 929.

When Augustine writes *Sed sapiens, inquiunt, iusta bella gesturus est*²⁰³ it is certain that his *sed sapiens* refers to the wise ones spoken of in the writings of Socrates, Plato, and Cicero.

Augustine prefaced the above passage with a discussion of the problem of language in human relations, noting how “when men cannot communicate their thoughts to each other, they are completely unable to associate with one another despite the similarity of their natures; and this is simply because of the diversity of tongues.”²⁰⁴ The Latin philosopher notes that in the case of Rome, one system of governance and one language was imposed on the diversity of peoples under their suzerainty, and this because they wanted to insure a “bond of peace and society.”²⁰⁵ This was clearly used by Augustine to analogize the “just war” ideology. Rome had secured her bond of peace – however such an assertion was ultimately false – via the “great wars” and “outpourings of human blood”²⁰⁶ which were necessary, according to Augustine, to bring this ostensible peace about. Augustine laments this “necessity” of slaughter in order to facilitate the *Pax Romana*, but nonetheless asserts it as a basic doctrine of any attempt at peace between nations.

For this research, one of the most important observations about Augustine’s endorsement of the just war concerns the basis on which he recommended it. Plato’s Republic offers the following evidence in this line:

Socrates: ‘What about the just man? In what activity, and for what purpose, is he the one best able to treat his friends well and his enemies badly?’

²⁰³ AVGUSTINI, AVRELII, *De Civitate Dei: Libri XI-XXII*, eds. Bernardus Dombart et Alphonsus Kalb, *Corpus Christianorum, Series Latina*, vol. 48 (Turnhout: Typographi Brepols Editores Pontificii, 1955), 19.7, 672: my translation reads ‘[b]ut the wise man, it is said, conducts just wars.’

²⁰⁴ Augustine, *City of God*, 19.7, 928.

²⁰⁵ Augustine, *City of God*, 19.7, 928.

²⁰⁶ Augustine, *City of God*, 19.7, 928.

Polemarchus: ‘In war and alliances, I think.’²⁰⁷

Socrates: ‘Do we need, then, to carve ourselves a slice of our neighbours’ territory, if we are going to have enough for pasturage and ploughing? And do they in turn need a slice of our land, if they too give themselves up to the pursuit of unlimited wealth, not confining themselves to necessities?’

Glaucon: ‘They are bound to Socrates.’

S: ‘And will the next step be war, Glaucon? Or what?’

G: ‘War.’

S: ‘Let us say nothing for the moment,’ I said, ‘about whether the effect of war is harmful or beneficial. Let us merely note that we have discovered, in its turn, the origin of war. War arises out of those things which are the commonest causes of evil in cities, when evil does arise, both in private life and public life.’²⁰⁸

‘When Greeks fight barbarians, then, and barbarians Greeks, we shall say they are at war. We shall say they are natural enemies and that hostilities of this sort are to be called a war. But in cases where Greeks fight Greeks we shall say they are natural friends... hostilities of this kind are to be called a civil war.’²⁰⁹

In terms of how these ideas connect to Augustine’s ideas on just war, the proximity of the mention of the just man and treating his enemies to a war presents itself, but withal there is no absolute prescription for a “just war.” Socrates patently avoids the discussion of harm or benefit, but his other comments do seem to imply that some wars are necessary and therefore, if prosecuted by the just man, then plausibly just. His assertion that Greeks fighting barbarians is a “natural” result also seems to point in the direction of a justified war.

It is likely safest to characterize Plato’s comments on war as an important basis, upon which others fused the just man’s war into the latent “just war”. Aristotle picks up the theme somewhat, but he talks about war in an ancillary way vis-à-vis his discussion of the ordering of society and its laws. He, perhaps, serves the evolution of the idea most strongly by connecting the political importance of peace *via* war. He writes:

²⁰⁷ Plato, *Republic*, 2000, 1.332e, 7.

²⁰⁸ Plato, *Republic*, 2000, 2.373d-373e, 56.

²⁰⁹ Plato, *Republic*, 2000, 5.470c-570d, 171.

[w]ar must be looked upon simply as a means to peace, action as a means to leisure, acts merely necessary or useful as a means to those which are good in themselves. The statesman should bear all this in mind when he drafts his laws.²¹⁰

Comments akin to these do appear in Aristotle's writings, but similar to Plato, he does not attempt any thorough or prescriptive discussion on just war. Such an occurrence would only be occasioned once the idea of just war left the purview of φιλοσοφί μόνος²¹¹ and was adopted by a statesman whose politics demanded it.

Cicero leaves clear indications in his writings that he was likely the strongest proponent in this direction prior to Augustine himself. Cicero wrote:

... a war is never undertaken by the ideal state, except in defense of its honour or its safety....²¹²

... those wars are unjust which are undertaken without provocation. For only a war waged for revenge or defense can actually be just....²¹³

... No war is considered just unless it has been proclaimed and declared, or unless reparation has first been demanded....²¹⁴

... But our people by defending their allies have gained dominion over the whole world....²¹⁵

Then, too, in the case of a state in its external relations, the rights of war must be strictly observed. For since there are two ways of settling a dispute: first, by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion. *The only excuse, therefore, for going to war is that we may live in peace unharmed*; and when victory is won, we should spare those who have not been blood-thirsty and barbarous in their warfare.²¹⁶

²¹⁰ Aristotle, *Politics, Aristotle's Politics and Athenian Constitution*, trans. and ed. John Warrington (London: J.M. Dent & Sons Ltd, 1959), 1333a, herein Book 7.3, 212.

²¹¹ "Philosophers alone."

²¹² Cicero, *The Republic*, De Re Publica De Legibus, trans. Clinton Walker Keyes, Loeb Classical Library, eds. T.E. Page et al. (London: William Heinemann Ltd., 1948), 3.23, 211.

²¹³ Cicero, *The Republic*, 3.23, 213.

²¹⁴ Cicero, *The Republic*, 3.23, 213.

²¹⁵ Cicero, *The Republic*, 3.23, 213.

²¹⁶ Cicero, *De Officiis*, 1.11, 37; See also: Cicero, *De Officiis*, 1.23, 81 [emphasis added]; Cicero on the source of just procedure in war (Cicero: *De Officiis*, 1.11, 39): As for war, humane laws touching it are drawn up in the fetial code of the Roman people under all the guarantees of religion; and from this it may be gathered that no war is just, unless it is entered upon after an official demand for satisfaction has been submitted or warning has been given and a formal declaration made.

What is patently clear in these passages from Cicero is that Augustine was not responsible *in toto* for the doctrine of just war. Augustine had taken it from Cicero, who in turn had based his assertions on Plato's "just" man. Augustine posited this just war in a context wherein his own Roman world was tearing apart at the seams, and perhaps he saw ahead to the need for ideological justifications pursuant to fighting off the heathen hordes, certainly Plato and Cicero did.²¹⁷ Whether or not he did foresee this, what is germane to this research on the development of the European model of state sovereignty is that Augustine's ideas were employed as justifications, not so much against the barbarians who were, relatively quickly, converted to the Christian religion, but against heresies within the geographical purview of the Roman Catholic Church and eventually against the citizens of the Islamic world who challenged both the rule and territorial integrity of the Holy Roman Empire and its constituent states and territories.

Thomas Aquinas (1225-1274 C.E.) would, in turn, put finer points on the doctrine by maintaining that there was needed, first, "the authority of a ruler in whose competence it lies to declare war,"²¹⁸ second, that a just cause is required, and third, a right intention on the part of the belligerents.²¹⁹ Yet Aquinas was only furthering the foundational doctrine which had been laid out by Augustine, and Aquinas is explicit about this connection.²²⁰

²¹⁷ *Vide supra.*

²¹⁸ Thomas Aquinas, *Summa Theologica*, Aquinas: *Selected Political Writings*, trans. J.G. Dawson (Oxford: Basil Blackwell, 1974), Qu. 40, art. 1, 159.

²¹⁹ Thomas Aquinas, *Summa Theologica*, 40.1, 159.

²²⁰ Thomas Aquinas, *Summa Theologica*, 40.1, 159.

Augustine, Peace, and Sovereignty

But it is beyond doubt a greater felicity to have concord with a good neighbor than to subdue a wicked neighbour by means of warfare.

Augustine, *City of God*

While Augustine does not deal with state sovereignty in any way comprehensible to the public international law norms of the twentieth century, it is duly noted that his constant attention to the idea of peace among nations, and peace as the goal of his just wars, meant he was very cognizant of the need for some kind of policy to deal constructively with neighbouring states. That he understood the basis for Roman sovereignty in his own context is evidenced in a letter he preserved from Emperors Theodosius II and Honorius in 419 C.E. which reads:

For as, by a sincere confession of the truth, we ourselves, in obedience to the Council of Nice, worship God as the Creator of all things, and as the Fountain of our imperial sovereignty...²²¹

Roman emperors in the fifth century looked to God as the “fountain” of their imperial sovereignty, in much the same way Hammurabi did some two millennia earlier. Not much seems to have changed over those many centuries in terms of the way nations understood their political pre-eminence – it was, consistently, divinely ordained. Right up until at least the Modern Period, this cosmology prevailed throughout most of the world.

Augustine does employ the notion of sovereignty during a chapter of his *City of God* which was didactically aimed at impugning Rome for its past empire building. He writes:

‘But after Cyrus in Asia, and the Lacedemonians and Athenians in Greece, began to subdue cities and nations, and to account the lust of sovereignty a sufficient ground for war, and to reckon that the greatest glory consisted in the greatest empire;’ This lust of sovereignty

²²¹ Emperors Honorius and Theodosius II, *Letter CCI* (A.D. 419), *Letters of St. Augustin*, trans. J.G. Cunningham, *The Confessions and Letters of St. Augustin with a Sketch of His Life and Work*, vol. 1, 1st ser., ed. Philip Schaff, *A Select Library of the Christian Church: Nicene and Post-Nicene Fathers* (Edinburgh: T & T Clark, 1886; Peabody: Hendrickson: 1995), 201, 557.

disturbs and consumes the human race with frightful ills. By this lust Rome was overcome when she triumphed over Alba, and praising her own crime, called it glory.²²²

Augustine's use of "sovereignty" here comes with a clear and negative connotation – that is pursuant to unprovoked aggression in the business of national aggrandizement. He demurs on the use of force merely for the expansion of one's borders, or in other words the area over which one is sovereign, but he wholeheartedly commends to posterity the positive value attached to the use of aggression to bring peace between nations.

Augustine writes:

Peace should be the object of your desire; war should be waged only as a necessity, and waged only that God may be it deliver men from the necessity and preserve them in peace. For peace is not sought in order to the kindling of war, but war is waged in order that peace may be obtained. Therefore, even in waging war, cherish the spirit of a peacemaker, that, by conquering those whom you attack, you may lead them back to the advantages of peace; for our Lord says "Blessed are the peacemakers; for they shall be called the children of god."²²³

It seems fairly evident and is generally agreed upon that according to Augustine, peace was the necessary goal of armed aggression.²²⁴

Just as Augustine never wrote systematically about just war, so we do not find a discussion of sovereignty *per se* from Augustine. I suggest that for Augustine the concept of just war was simply part of the Platonic package of ideas that he inherited from Cicero. In terms of Augustine's concept of sovereignty, the inference could fairly be made that, as a Christian philosopher in the midst of a collapsing western empire, *prae barbari*, he saw it as something reserved only for those *Christian* states that had peace as their aim. Hence, Augustine tacitly approves the notion that God was the source of Rome's

²²² Augustine quoting Sallust within quoted text. Augustine, *The City of God*, trans. Marcus Dods, *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church*, ser. 1, vol. 2, ed. Philip Schaff (New York: Charles Scribner's Sons, 1907), 3.14, 50; See also Dyson's translation for 'lust of sovereignty' as 'lust for mastery' in Augustine, *City of God*, 2001, 3.14, 111.

²²³ Augustine, *Letter CXCI, Letters of St. Augustin.*, 189.6, 554.

²²⁴ William R. Stevenson Jr., *Christian Love and Just War: Moral Paradox and Political Life in St. Augustine and His Modern Interpreters* (Macon: Mercer University Press, 1987), 11; See also, John Neville Figgis, *The Political Aspects of S. Augustine's 'City of God'*, 100.

sovereignty, albeit disappearing, as it was, before his eyes. While Augustine does not give state sovereignty any kind of theoretical treatment, in a real way he set the ideological and theoretical stage for those who would. For writers like Jean Bodin and others who came to be associated with the first serious treatment of sovereignty, they did so as Europe's "states" made their long journey out of Augustine's theocracy and began their supine and, yet ultimately, inexorable march towards the era of the sovereign state.

CHAPTER FOUR

A DISCUSSION ON THE THEORETICAL DEVELOPMENT OF THE NOTION OF SOVEREIGNTY

O Enlil, the lord who decides destinies, whose commands cannot be altered, who makes my sovereignty magnificent...

King Hammurabi, *Code of Hammurabi* (18th c. B.C.E.)

... περί τε τῆς ἀρχῆς καὶ περὶ τῆς πόλεως, καὶ διὰ μάχης ἐχώρησαν, ἐν ᾗ ὁ Ῥῶμος ἀπέθανεν....

Zonaras 7,3. *Dio's Roman History*

From King Hammurabi to the present day, the notion of sovereignty has always been associated with power. The ancient Babylonian King, who bequeathed history with one of the first known written codes of law, was specific to mention in his code exactly who it was who underwrote the sovereignty, and importantly, for his own legitimacy, who executed it. Almost one millennium after Hammurabi of the eighteenth century B.C.E., in the eighth century, we learn from the historian Zonaras that sovereignty, specifically the question of who should wield such, was the cause of Remus' death at the hands of his twin brother Romulus.²²⁵ It seems that in the minds of the two founding brothers of Rome, ultimate authority could not rest in the hands of both and thus it ultimately rested with one. Yet Rome's history shows that such an arrangement was unsatisfactory to many of its citizens, and in time kings were replaced with a republican scheme, which was,

²²⁵ '[Romulus and Remus disputed] about the sovereignty and the city, and they got into a conflict in which Remus was killed.' Zonaras 7,3, *Dio's Roman History*, trans. Earnest Cary (London: William Heinemann, 1914), Book I, 17.

itself, subsequently vanquished by an imperial system of governance. I note here, though, that sovereign authority in all these circumstances, devolved as it had on various arrangements of interested parties, never wholly moved beyond the class and religious interests which characterized the lives of its executors. In other words, from Hammurabi to Hadrian, and even on past to the Hapsburgs, the only affective benefactor of sovereignty was, at least in theory, the deity. In societies where religion was the fundamental framework of daily life for all classes, rulers, for the sake of legitimacy, had to acknowledge that it was the God or ‘the gods’ who had bequeathed their sovereignty. In this context sovereignty was never corporately or individually understood as solely attached to either the will or skill of personages.

Yet with the Early Modern collapse of Religious hegemony in Europe, and the concomitant dawn of humanism and republicanism, sovereignty was an idea which had to be re-characterized in an effort to understand the concept in a more rationally centered way. God remained the guarantor of European sovereigns, at least on paper, but the untrammelled rights of kings and nobles to direct their affairs as they saw fit without regard to any notion of reciprocal obligations under the law was now being reigned in to mollify the outrage of those who had labored under their oppressive yokes. The most important of those whose rights began to be recognized under the rubric of “sovereignty” were the erstwhile masses of subjects whose cultural and legal status was slowly transforming away from royal property towards a more conciliatory notion of individuals under sovereign rule and junior partners in the life of the state. The seventeenth century joint recognizance in England’s *Calvin’s Case* – only ten years prior to the start of the Thirty Years’ War and thirty years before England’s own revolutionary war – that there

existed a reciprocal duty between sovereign and vassal was perhaps emblematic in some sense of both the positive trend towards legislated protection of citizens, and yet, as well, the almost imperceptible nature of any change to sovereignty's framework prior to Westphalia.

*duplex et reciprocum legamen; quia sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem: merito igitur ligeantia dicitur a ligando, quia continet in se duplex ligamen.*²²⁶

While this classic statement of reciprocal obligations indicated a legal entrenchment of a principle aimed at the safeguarding of both parties within the sovereignty compact, the reality of the context that gave rise to it was one of barely veiled feudalism. Yet the beginning of the end was in sight, and within fifty years from this 1608 case, the English Civil War and Thirty Years' War were both in high gear.

Sovereignty's First Raconteur: Jean Bodin

The keystone event which served as the impetus for *all* these fluctuations in political ideology and practice was the Protestant Reformation, which although it had begun centuries earlier with John Wyclif and Jan Hus, was now in full bloom in the fifteenth century pursuant to Martin Luther and his engagement with a corrupt and recalcitrant Roman Catholic Church. Coming on the heels of Martin Luther, and in the midst of the reformation's continuing upheavals, was sovereignty's first raconteur, the French political commentator and attendant of the royal court, Jean Bodin (1530-1596 C.E.). This early modern thinker's attempt to tackle the idea of sovereignty was essentially driven by his desire to put his French King "at the apex of the pyramid of authority."²²⁷

²²⁶ *Calvin's Case*, ER 77, (1608) Coke 7, 382.

²²⁷ Stéphane Beaulac, "The Social Power of Bodin's 'Sovereignty' and International Law," *Melbourne Journal of International Law*, 4 (2003): 25.

Bodin was a member of the Catholic Church and wrote under a Catholic King, but it is suspected that his true religious commitments were much closer to Judaism and neo-Platonism.²²⁸ Notwithstanding the conjecture on his genuine religious sentiments, we are left with the historical fact that Bodin wrote to curry favour with the, then, new Catholic monarch,²²⁹ King Henri III,²³⁰ and it cannot be too surprising that his definition of sovereignty should fall most favourably to this same king. In his most famous work, *Les six Livres de la Republique*,²³¹ Bodin wrote:

Sovereignty is the absolute and perpetual power of a commonwealth...²³²

We thus see that the main point of sovereign majesty and absolute power consists of giving the law to subjects in general without their consent.²³³

For if justice is the end of law, law the work of the prince, and the prince the image of God; then by this reasoning, the law of the prince must be modelled on the law of God.²³⁴

Since there is nothing greater on earth, after God, than sovereign princes, and since they have been established by Him as his lieutenants for commanding other men, we need to be precise about their status (*qualité*) so that we may respect and revere their majesty in complete [212] obedience, and do them honor in our thoughts and in our speech. Contempt for one's sovereign prince is contempt toward God, of whom he is the earthly image. That is why God, speaking to Samuel, from whom the people had demanded a different prince, said 'It is me that they have wronged.'²³⁵

This same power of making and repealing law includes all the other rights and prerogatives of sovereignty, so that strictly speaking we can say that there is only this one prerogative of sovereignty, inasmuch as all the other rights are comprehended in it – such as declaring war or making peace; hearing appeals in the last instance from the judgments of any magistrate; instituting and removing the highest officers; imposing taxes and aids on subjects or exempting them; granting pardons and dispensations against the rigor of the law; determining

²²⁸ Julian H. Franklin, trans. and ed., *Jean Bodin: On Sovereignty, Four Chapters from the Six Books of the Commonwealth* (Cambridge: Cambridge University Press, 1992), xii.

²²⁹ Beaulac, *Bodin's Sovereignty*, 9.

²³⁰ Reign: 1574-1589.

²³¹ Hereinafter, '*Six Books*,' (Beaulac, ft. 48, 9). The English translation used in this study is from Julian H. Franklin's *Jean Bodin: On Sovereignty*. English translations of this work appeared in 1606 from Richard Knolles and then M.J. Tooley in 1955, but according to Franklin both contain fundamental flaws arising from selectivity as well as lack of scholarly rigour (Franklin, xxxv). Franklin's translation is based on the French edition of 1583 from Jacques du Puys, and it has been used as the master text for translations into German and Italian, and is the one commonly used by scholars (Franklin, xxxv-xxxviii).

²³² Bodin, *Six Books*, Franklin, 1.8.122, 1.

²³³ Bodin, *Six Books*, Franklin, 1.8.142, 23.

²³⁴ Bodin, *Six Books*, Franklin, 1.8.158, 45.

²³⁵ Bodin, *Six Books*, Franklin, 1.10.211-212, 46.

the name, value, and measure of the coinage; requiring subjects and liege vassals to swear that they will be loyal without exception [224] to the person to whom their oath is owed. These are the true prerogatives of sovereignty, which are included in the power to give law to all in general and each in particular, and not to receive law from anyone but God.²³⁶

When discussing sovereignty, Bodin is referential, deferential, and preferential to one source as the sole loci for temporal sovereignty: God. The fact that perhaps the most robust and respected theoretical treatment of sovereignty up to and including the modern period is so inextricably woven into a monotheistic worldview is important to both this research and the greater conversation on sovereignty. It is important to this research because it reflects the saturation levels of a Nicene and Augustinian Christian outlook which was still, even at such a great distance, deeply committed to the Platonic idea that the “good,” or God, was the source of all successful political arrangements. The observation pertaining to Bodin’s theistic worldview is also important to the greater conversation on sovereignty in that it portrays the necessity of a moral guarantor, and Bodin’s enthusiastic subordination of his tenets of sovereignty to God in the pages of his *Six Books* is, if nothing else, an occasion for pause concerning the question of just what the modern public international law notion of sovereignty rests on besides the brute force that has served as sovereignty’s corollary from time immemorial.

Bodin’s sovereignty gave virtually untrammelled power to the king to both give and repeal laws at his discretion. This law-making power was the absolute apogee of Bodin’s sovereignty, and was put in the hands of one person, his king. In theory his king was bounded by only one law: not surprisingly, again, given the context, the law of God.

J.H.M. Salmon notes:

Bodin held back from making the legislative sovereign prince truly absolute, or free from any restraint. He was bound to observe Divine and natural law, although no human agency could

²³⁶ Bodin, *Six Books*, Franklin, 1.10.223-224, 59.

force him to obey the commands of God and the principles of moral justice. While he was not obliged to fulfil his promises, any more than he was to observe his own laws or those of his predecessors, he had to respect the covenants he made with his subjects, although he was the final judge of the equity of a covenant and of the time when it ceased to be binding because it no longer served the interest of the other party. Yet the sovereign could not change the fundamental or constitutional laws: 'Touching the laws which concern the state of the realm and the establishing thereof, forasmuch as they are annexed and united to the crown, the prince cannot derogate from them, such as is the law Salic.'²³⁷

Salmon noted this central inconsistency of both unhindered law-making power accorded to the king along with restraints on the very same in Bodin's sovereignty schema.²³⁸ Yet some kind of failsafe, such as the ultimate law of God overruling the king, was not to be unexpected either: and as shown above, similar clauses went into most elaborations of the ideal state.

D. Engster has suggested there was a contextual reason which prompted Bodin to attribute all sovereignty to the law-making power of the king, that being the context in which he lived.²³⁹ Engster argues that Bodin "proposed his absolutist theory of sovereignty as a way to preserve a minimal point of universal and immutable order for politics in a social world that he perceived as highly disorderly, corrupt and changing."²⁴⁰ Given the fact that laws were eventually recognized by Bodin to be mutable, Engster goes on to assert that Bodin was transferring the locus of universal right among people from a sovereign law to a sovereign law-maker.²⁴¹

Bodin wrote his treatise on sovereignty just as the fissures in the great wall of Catholic Christendom's ideological and political hold on Europe were becoming too large to ignore. Bodin had arrived on the heels of reformers like Erasmus (1469-1536

²³⁷ J.H.M. Salmon, "The Legacy of Jean Bodin, Absolutism, Populism or Constitutionalism?," *History of Political Thought*, 17.4 (1996): 503.

²³⁸ Salmon, *The Legacy of Jean Bodin*, 503.

²³⁹ D. Engster, "Jean Bodin, Scepticism & Absolute Sovereignty," *History of Political Thought*, 17.4 (1996): 470-471.

²⁴⁰ Engster, *Scepticism & Absolute Sovereignty*, 470-471.

²⁴¹ *Ibid.*, 471.

C.E.) and Martin Luther, and was a contemporary of Jean Calvin (1509-1564). It seems likely that Bodin saw the writing on the wall concerning the end of Christendom, and though he does not sever his ties to the Church, his *Six Books* were clearly drafted such that sovereignty's main players were God and the king, purposely giving short shrift to the weakened titular entities of pope and emperor.²⁴²

Given his context, it seems Bodin was, at least in some sense, trying to salvage as much as he could in terms of the ancient prescriptions for political order by bringing the law-making power in society as close to God as he possibly could. Instead of an order of sovereign power which devolved from God to the laws and then to the king, Bodin presented an order which put the king next in line to God. In this way, the laws were in some sense more directly subject to alteration, and perhaps this was due to the corruption and disorder which Bodin saw as the resultant effects of a late-mediaeval world where laws and tradition ruled out over divine order to the detriment of humankind. In other words, Bodin was fully prepared to jettison the dilapidated and abusive Catholic and Imperial system which was coming apart at the seams, but he could not countenance any shrinking back from the role of God as the source for all ordered and sovereign rule. D. Engster writes:

From a historical-theoretical perspective, therefore, Bodin's more absolutist theory of sovereignty appears not just as a reaction to circumstances, but also as his final solution to the problem of a highly secularized and changing temporal world. Once he decided that there was no universal law underlying the various laws of different peoples, he asserted his idea of absolute legislative sovereignty to serve as a new universal foundation of law and politics. He claimed the sovereign was a point of divine and natural right placed upon earth to impose order upon the otherwise corrupt and mutable social life of human beings.²⁴³

²⁴² Bodin, *Six Books*, Franklin, 1.8.155-156, 38-39.

²⁴³ Engster, *Jean Bodin, Scepticism & Absolute Sovereignty*, 471-472.

Bodin understood a God-ordained status for the king which was in keeping with both the God of the Jewish Scriptures, aka the Old Testament, and Pauline Christianity, both of which support the notion that secular rulers are placed on the throne by God alone.²⁴⁴ Bodin's reference, above, concerning God's lament to the prophet Samuel, which implies that rejecting God's prince is rejecting God, gives us perhaps some indication of the level of interconnectedness and indebtedness between Bodin's theistic worldview and his definition of sovereignty. I observe that Bodin, as the first theorist to give traction to the notion of sovereignty, was in both his assumptions and theory a product of his European Christian context. Thus, here again, long after the Greeks, Romans, and Augustine's treatment of the state have passed, we find Bodin in the seventeenth century still deeply committed to the theologically charged presuppositions of his ideological forebears. I suggest that far more than writing in defence of these ancients, although he does that on occasion,²⁴⁵ his *Six Lives* seems most concerned to defend the political order which comes from God alone.

Stéphane Beaulac also notes that with Bodin we are dealing with a definition of sovereignty aimed at the *internal* organization of a society, whereas with a later thinker like Emerich de Vattel (1714-1767 C.E.), the transmutation of the idea of sovereignty was then applied to the *external* and international community of nations.²⁴⁶ Beaulac's

²⁴⁴ 1 Samuel 8:7 reads: "and the LORD said to Samuel, 'Listen to the voice of the people in all that they say to you; for they have not rejected you, but they have rejected me from being king over them.'"; The Apostle Paul's letter to the Romans 13:1-4 reads "Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore whoever resists authority resists what God has appointed, and those who resist will incur judgement. For rulers are not a terror to good conduct, but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval; for it is God's servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain!" (NRSV: Anglicized Edition, 1989).

²⁴⁵ Bodin, *Six Books*, 2.1.264-265, 102-103.

²⁴⁶ Beaulac, *Bodin's Sovereignty*, 27.

assessment of Bodin's sovereignty leads him to suggest that sovereignty is a word that is subject to changes in its nature and effects over time, and the lineal bifurcation in meaning pursuant to its internal and external manifestations bears this out clearly.²⁴⁷ With this in mind, it may then be unrealistic to expect the word sovereignty to "settle" into a set definition either now or at any point in the future.

An interesting side bar to both Beaulac's observation about the growth of sovereignty beyond internal boundaries vis-à-vis Bodin's idea that sovereignty relegates to the monarch alone is the question of 'who would Bodin then attribute sovereignty to amongst a congress of nations?' If one person, the king, alone had sovereign power internally, would then one nation be recommended by Bodin as having the sovereign rule over other nations externally?

More Recent Assessment on Sovereignty

And it will be seen that there exists perhaps no conception, the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon.

Lassa Oppenheim, *International Law: a treatise*

Lassa Oppenheim's characterization of the general puzzlement which the notion of sovereignty had caused was not unwarranted in his own time in the nineteenth century, and it is certainly *apropos* now.²⁴⁸ A veritable ebullition of opinions and critiques have recently been – and by recently, I mean the last fifty years – aimed squarely at the idea of sovereignty;²⁴⁹ yet, through it all, Oppenheim's lament remains the presiding sentiment.

²⁴⁷ Beaulac, *Bodin's Sovereignty*, 27.

²⁴⁸ Oppenheim, L. (Lassa), *International Law: a treatise*, 3rd ed., vol. 1 of 2, ed. Ronald F. Roxburgh (London ; New York : Longmans, Green, and Co., 1920-1921): 1.1.66, 129.

²⁴⁹ Trudy Jacobsen, Charles Sampford, and Ramesh Thakur, eds., *Re-envisioning Sovereignty: The End of Westphalia?* (Aldershot: Ashgate, 2008); Neil Walker, ed., *Sovereignty in Transition* (Portland: Hart, 2003); John D. Montgomery and Nathan Glazer, eds. *Sovereignty Under Challenge* (New Brunswick, NJ:

There seems to be a tension over whether sovereignty should remain the same, be re-envisioned, or scrapped altogether.²⁵⁰ It seems sovereignty as a solvent and acceptable concept is something which has yet to arrive, and perhaps the politics attached to both sides of the debate will insure that it never will. Sovereignty as an idea now seems to be “under construction,” in a manner of speaking, and yet it may be that such a state of being will turn out to be its most dangerous incarnation. The transformation of sovereignty that Beaulac highlighted from Bodin to Vattel took two-hundred years and was the result of monumental societal changes, but the current status for theoretical sovereignty is a far more mutable state of being. One of the problems for both practical and theoretical sovereignty may be that with no set definition it will be very hard to either regulate or criticize, precisely because it remains in flux. Yet, even in light of the difficulties, it seems that so long as sovereignty continues to be used by statespersons engaged in international legal relationships, what it means in that context must be of some import, even if there is ultimately room for improvement.

Hinsley’s Axiom

Sovereignty scholar F.H. Hinsley has indicated in his work that this is precisely the case. As indicated in the historical references already alluded to, Hinsley wrote that sovereignty was long understood as being the only unqualified authority within a political

Transaction Publishers, 2002); Jens Bartelson, *A Genealogy of Sovereignty*, no. 39, *Cambridge Studies in International Relations* (Cambridge: Cambridge University Press, 1995), 248; F.H. Hinsley, *Sovereignty* (New York: Basic Books, 1966), 232-233.

²⁵⁰ Martin Loughlin, “Ten Tenets of Sovereignty,” *Sovereignty in Transition*, ed. Neil Walker (Portland: Hart, 2003), 55; Jens Bartelson, *The Critique of the State* (Cambridge: Cambridge University Press, 2001), 1, 161-165. He writes (p. 164) ‘According to Walker, the most important expression of the limit of political imagination is the principle of state sovereignty. Its importance derives from the fact that state sovereignty is thoroughly constitutive of the modern political order and yet is itself constituted in and through political discourse... Within this view, the sovereign state enjoys no existence outside the discursive practices of international relations.’

system,²⁵¹ and that it became an idea which people used to strengthen older forms of legitimation or tailored it in new ways on the way to converting their raw authority into power.²⁵² He also poignantly noted that so long as the definition ends with “and no final and absolute authority exists elsewhere,” sovereignty could be satisfactorily defined.²⁵³ Hinsley’s apologetic treatise on sovereignty rests on the axiom that the modern complexity of human society demands a functional understanding of sovereign governance, notwithstanding criticisms to the contrary.²⁵⁴ He writes:

The concept of the sovereignty of the ruler was at the outset an essential ingredient of these theories for a good reason. When it became one essential feature of political society, this division of power or this collaboration of forces did not dim the importance of another – the need to ensure the effective exercise of power. The function of the concept of sovereignty was to provide the only possible compromise formula by which this primary need could still be met despite the development of this unavoidable association. As the community became still more complex the concept of the sovereignty of the ruler was challenged by the thesis of the sovereignty of the people and even, later, by the thesis that the state was dispensable. These arguments could not meet this primary need, however, the more so as the growing complexity of the community was only serving to emphasize the importance of the state. On both of these accounts the only recourse was to preserve sovereignty in the society by tightening still further the association between the state and the community at the expense of incurring greater complexity also in the character, the forms and procedures and the conception of the state. It is safe to say that, far from seeking to destroy it, the central developments of modern times in that direction – the rise of legislatures, the extension of suffrages, the introduction of representation and the insertion of constitutional features into the composition or the basis of executive organs – have been produced by the fundamental need to preserve the sovereignty of the state, as the pre-condition of effective action in and by the community, against the growth in modern political societies of other imperative but nevertheless less basic needs.²⁵⁵

Of course, premised as all these changes of the Modern and Post-modern period were on the antecedent Protestant Reformation and rise of humanism, Hinsley’s axiom must, then, be altered somewhat to acknowledge that it is not the mere complexity of society which required the need for a functional understanding of sovereign governance, but a

²⁵¹ Hinsley, *Sovereignty*, 1.

²⁵² Hinsley, *Sovereignty*, 25.

²⁵³ Hinsley, *Sovereignty*, 26.

²⁵⁴ Hinsley, *Sovereignty*, 233-235.

²⁵⁵ Hinsley, *Sovereignty*, 233-234.

complexity which is based on the need to protect and preserve those fundamental human freedoms and rights which were the epicentre of the struggles which ultimately necessitated such complexities in the first place.

In other words, just as with the Greek conception wherein sovereignty was thought only to rest in a, first, morally centered, and then, second, coercive framework, it was the attendant positive consequences for the *polis* in general which were the *sin qua non* consideration which justified such paternal measures. In a somewhat similar way, it seems that the same positive consequences were demanded by the peoples of Europe in their march towards the state enforcement and protection of human rights. Merely citing societal complexity as a justification for the sovereign exercise of power would be leaving aside the very heart of what the Early Modern and Modern revolutions in thought and culture stood for.

Similar to Hinsley, W.J. Stankiewicz contends that the crux of sovereignty is found in the theory's ability to functionally integrate the 'complex' aspects of rule. He wrote:

It is the ability of the theory of sovereignty to do this – to integrate into a meaningful complex a large number of distinct categories, such as coercive power, community, obligation, legitimacy, and authority – which determines the 'meaning' of sovereignty: not some normative statement that holds true of only one particular society, or some empirical observation about a single element in the sovereignty concept.²⁵⁶

Here again, it is the facilitation of the simultaneous functionality of the variegated aspects of state organization which is alleged to hold sovereignty together. Both Hinsley and Stankiewicz comment on the role which the complexity of human relations played in the growth of state sovereignty. Yet the complexities both of these scholars refer to, in so far as they include the advancement of human rights in the Modern and Post-modern eras,

²⁵⁶ W.J. Stankiewicz, "The Validity of Sovereignty," *In Defense of Sovereignty*, ed. W.J. Stankiewicz (London: Oxford University Press, 1969), 294.

were ones which were laden with morally positive content and outcomes. Some of the burgeoning complexities may have had little to do with human rights, such as the growth of cities and the industrial revolution, but when we look at the transformation of legal instruments and the vast changes in functional political structures in the course of the latter half of the second millennium of the Common Era, we see that the general direction for both these phenomena were towards a greater protection of human and political rights for the people living in these nascent states. From the *Magna Carta* to the Protestant Reformation, and on to the revolutionary wars of the modern period, the orientation of these events was ultimately about the rights of people, however obfuscated the individual events were by the egos of kings, popes, and generals.

It would seem that any justification on the need for preserving sovereignty based on the complexity arising from Modern and Post-modern societal change will have to insist that such change be consistent and continual, where necessary, with its original goal of the protection of persons and their concomitant rights. If the international legal community jettison's this moral imperative for sovereignty, I suggest it would negate the legitimacy of it for the primary reason that the march towards the protection of human rights is, taking a long view, the foundation of the idea of state sovereignty within international legal discourse.

Some Observations on Sovereignty and Westphalia

That there shall be a Christian and Universal Peace, and a perpetual, true, and sincere Amity, between his Sacred Imperial Majesty, and his most Christian Majesty; as also, between all and each of the Allies, and Adherents of his said Imperial Majesty, the house of *Austria*, and its Heirs, and Successors; but chiefly between the Electors, Princes, and States of the Empire on the one side; and all and each of the Allies of his said Christian Majesty, and all their Heirs and Successors, chiefly between the most Serene Queen and Kingdom of *Swedeland*, the Electors respectively, the Princes and States of the Empire, on the other Part. That this peace and Amity be observ'd and cultivated with such a Sincerity and Zeal, that each Party

shall endeavour to procure the Benefit, Honour and Advantage of the other; that thus on all sides they may see this Peace and Friendship in the *Roman* Empire, and the kingdom of *France* flourish, by entertaining a good and faithful Neighbourhood.

Article 1, *Treaty of Münster*

October 24, 1648

What is fundamentally germane in this opening Article to the importance of the Peace of Westphalia for the development of a system of sovereign states in Europe is the clear recognition of two entities, vis-à-vis one; which had been the status quo up until then.

The King of France, styled the “most Christian Majesty,” was here apposed to the Emperor of the so-called “Roman Empire.”²⁵⁷ Here, though, the French King is placed on an equal footing with the Holy Roman Emperor, which highlights the re-distribution of sovereignty which was taking place.

One of the themes which comes out of the Westphalian agreements and its more recent attendant literature also happens to be a key tenet to this present research, the fact that Westphalia was fundamentally necessitated by the conflicts within the Christian religion. Put simply, the societal bifurcation which led to the Thirty Years’ War in Europe found its genesis in the divergent dogmas which predominated in the Catholic and Protestant arms of the Christian religion.

Leo Gross, in his seminal work on Westphalia, emphasized that The Thirty Years’ War was born out of religious conflict and that the Peace of Westphalia established a far reaching and international guarantee aimed at securing religious equality for the Protestant and Catholic states within Europe.²⁵⁸ The peculiar note here is that both sides claimed to be *the* Christian religion, and based their claims on much the same kind of dogmatically driven concerns which characterized the Arian split, but which, in this case,

²⁵⁷ *Treaty of Münster*, October 24, 1648, *Major Peace Treaties of Modern History: 1648-1967*, vol. 1, ed. Fred L. Israel (New York: Chelsea House Publishers, 1967), Article 1, 9.

²⁵⁸ Leo Gross, “The Peace of Westphalia, 1648-1948,” *American Journal of International Law*, vol. 42 (1948): 21-22.

had overwhelming political and military implications attached to them. Gross also points to the importance of the peace guarantee itself, specifically the fact that all parties were required to defend it against all others, regardless of which side of Christianity they were on.²⁵⁹ Westphalia was a step towards a constitutional Europe wherein all adherents were expected to vouchsafe the terms by intervening in case of a breach.²⁶⁰ As much as the two treaties were the beginning of international recognition and mutual obligation between states, it is fundamentally important to appreciate that the context for such correlatives were rooted in the religious divide that existed in Christian Europe. If sovereignty did emerge here at Westphalia, it must be conceded that it was a religiously charged sovereignty. It was, at its core, a right to rule over one's own *religious* affairs with impunity.

Although the great war of the seventeenth century began due to a religious divide, the key implications of its subsequent peace for the development of the international legal system seems to have been more grounded in its tendency to recognize republican states, regardless of their religion.²⁶¹ I would suggest that in the same way Nicaea set the Christian Church on a trajectory for statehood and sovereignty, so Westphalia set the nations of Europe on a trajectory for individual state sovereignty. Nicaea was an experiment in homogeneity: Westphalia, an experiment in heterogeneity. Westphalia was the constitutional act which represented Europe's emergence from an era of universal

²⁵⁹ Gross, *The Peace of Westphalia*, 24.

²⁶⁰ David Jayne Hill, *A History of Diplomacy in the International Development of Europe*, Vol. II, 1925, p. 602, cited in Gross, "The Peace of Westphalia," 24.

²⁶¹ Gross, *The Peace of Westphalia*, 26.

powers to the era of republican states:²⁶² and I suggest the former had begun at Nicaea. If Westphalia was the death of the universal reign, then the Council of Nicaea was its birth.

The Nicene gathering was the first constitutional partnership between the Christian Church and the state, and with the Emperor Constantine's calling and presiding over the Council, the event's significance in this regard can hardly be exaggerated. Yet by the seventeenth century, not only had the relationship between the emperor and church radically changed, but so to had the relationship of these two powers to the political organization of their "subjects," represented in the emergence of republican states during the early modern period.

As mentioned above, the key development moving Europe towards this clash of dogma, military power, and emergent statehood, was the Protestant Reformation. Gross correctly observes that this factor, along with the Renaissance and nationalism, struck a decisive blow to the universal authority claimed by the universal powers.²⁶³ He writes:

The combined impact of these centrifugal forces could not, in the long run, be resisted solely by the writings of the defenders of their authority. To maintain the claims it would have been necessary to display a real overpowering authority. Neither the Pope nor the Emperor, however, was at that time in the position to restrain effectively the centrifugal tendencies.²⁶⁴

No longer was there any Constantine figure to bring to bear any kind of overpowering authority to settle disputes intrinsically grounded in dogma. Constantine's state Church had by then grown far beyond any of its own deontological justifications into the shared governance of Europe. What had begun, at least where the Church was concerned, as a struggle for monopoly on doctrine at Nicaea ended in perhaps a similar way with a war over another dogmatic divide between the Catholics and the Protestants. In both cases,

²⁶² Gross writes it was "the end of epoch and the opening of another," *Peace of Westphalia*, 28. Cited in Gross also, 28: John Eppstein, *The Catholic Tradition of the Law of Nations*, 1935, p.192. 28.

²⁶³ Gross, *The Peace of Westphalia*, 28.

²⁶⁴ Gross, *The Peace of Westphalia*, 28.

interestingly, it was the political governing power that first showed the Church the door *into* a place of sovereign power, and ultimately showed them the way out, as well.

On the political side of the equation, vis-à-vis the religious aspect, while Westphalia represented a shift away from the antiquated system of Europe's erstwhile governance, Derek Croxton has reminded us that no cataclysmic change was characteristic of the Westphalian exercise. He writes:

The Holy Roman Empire did *not* cease to exist in practice or in theory in 1648. Had it been abolished, one could argue that the peace of Westphalia legitimized the de facto independence of the German princes, and thus took a demonstrable step towards the formal recognition of sovereignty. The estates continued after 1648, to think of themselves as a single body.²⁶⁵

The process of undoing the Church and Emperor's power had certainly not reached any end-game by the time of Westphalia, but it cannot be doubted either that with the end of the war and Europe decimated, that things were never going to be the same again.

Croxton rightly points out that even Pope Urban VIII, who helped organize the Westphalian congress, refused to act as arbitrator and gave instructions for the papal nuncio not to make any proposals.²⁶⁶ Croxton insists that too much has been attributed to Westphalia as some lineally placed panacea which birthed the modern state system²⁶⁷ and such an observation seems reasonable in a *prima facie* way. It seems a classic case of taking too little to mean too much. But perhaps, in terms of what my own research aims to do and with a more robust consideration of context, there is the rub.

²⁶⁵ Derek Croxton, "The Peace of Westphalia of 1648 and the Origins of Sovereignty," *The International History Review*, 21.3 (Sept. 1999): 574.

²⁶⁶ Croxton, *Westphalia and the Origins of Sovereignty*, 572.

²⁶⁷ Croxton writes: A great deal of creativity is required to attribute sovereignty to the peace of Westphalia in the way scholars have traditionally done. It is more reasonable to treat the negotiations at the congress (as opposed to the treaties that followed) as an important and identifiable stage in the evolution of the states system towards sovereignty. Nobody began or even ended the negotiations at Westphalia with the idea of creating an international system of sovereign, independent states. Many, however, wished to protect their own sovereignty (Croxton, *Westphalia and the Origins of Sovereignty*, 588-589).

Westphalia looks, at one level, like merely a treaty between two Protestant kings and a Catholic Holy Roman Emperor. But as Gross pointed out, and as the Treaties themselves reveal, Imperial German states having a free hand to choose their own version of Christianity was a marked change from the status quo. In an era where one's religion was meted out on your heretical brethren with swords and bloodshed, and wherein religions were demarcated in a real sense by physical "sovereign" borders, such a release of power as this was sovereignty itself changing hands. Croxton is right that the state system which emerged much later was not present or even considered at Westphalia,²⁶⁸ and perhaps the contextual exigencies pursuant to the rebuilding process after the war would have made that impossible in any event. Yet simply because the individual imperial German states did not infer an international system of equal nation states based on their behaviour immediately following the congress, does not then mean that the decisiveness of the legislated international treaty meant any less in the long run to Europe's organization of states.

Words were very important to popes and emperors in Europe and had been since the inception of the Christian religion. One only has to look at the legislated enactments of the Church councils, beginning with Nicaea, to understand how much words meant to them. Here at Westphalia, all the brutish invective which had been characteristic of conciliar documents against heretics from Arius to Luther, all the violent acts which had been based on mere 'words,' had finally met a more formidable opponent than themselves. What they met was a concord between nations that their illimitable rule, ostensible or not, was at its end. Westphalia marks the occasion of two legislated

²⁶⁸ Croxton, *Westphalia and the Origins of Sovereignty*, 588-589.

documents which disenfranchised the Church and Emperor of a significant amount of political power, and thus by definition, sovereignty.

Wayne Hudson and Possibilities for Sovereignty

Wayne Hudson recently noted that even in spite of the classic resistance within the discipline of history towards policy concerns, Michael Mann and John Hall have suggested that we might well be able to notice patterns of long term development and make specific structure-related predictions.²⁶⁹ Hudson's 'constructive realism'²⁷⁰ approach privileges a 'laying out' of historical materials in an effort to show the reader that new ways framing an idea are in order.²⁷¹ He writes:

A focus on the 'making' of knowledge objects characteristically involves tensions between an emphasis on the 'making' of entities, the claim that entities already made can be made differently, and an emphasis on the role social and economic conditions have in determining how entities are made. I submit that these tensions can be resolved, however, by opting for a form of constructivism which privileges a 'laying out' rather than recursive inquiries into how *xs* were produced.

A constructive approach of this kind challenges nineteenth-century European history's obsession with narratives, chronicles and stories, and expose (sic) the limitations of a conception of history which implies that truth can be produced by examining the testimony of eyewitnesses (*histor*, and eyewitness). Whereas nineteenth-century European history often sought to confirm the reader's belief in moral values already constitutive of the socio-legal order in which she or he lived, a constructive approach seeks to persuade the reader that socio-legal innovations are needed in light of historical materials.²⁷²

As my own comparative constructivist technique hopes to accomplish, Hudson's approach is also pointedly more concerned with making historical inquiry the handmaiden of progress, rather than the other way around. Moving the idea of sovereignty from a place of homogeneity to a place of heterogeneity pursuant to its genesis as a

²⁶⁹ Wayne Hudson, *Fables of Sovereignty, Re-envisioning Sovereignty: The End of Westphalia?*, eds. Trudy Jacobsen, Charles Sampford, and Ramesh Thakur (Aldershot: Ashgate, 2008), 20. See J. Hall, *Powers and Liberties: The Causes and Consequences of the Rise of the West* (Oxford: Blackwell, 1985).

²⁷⁰ Hudson, *Fables of Sovereignty*, 20.

²⁷¹ Hudson, *Fables of Sovereignty*, 21-22.

²⁷² Hudson, *Fables of Sovereignty*, 21-22.

“solvent” institutionalizing concept may provide a more robust and morally-centered possibilities for future international arrangements.

In this research, I have emphasized the importance of the experience of the Christian religion to the development of the European notion of sovereignty, in so far as the Council of Nicaea set the Church on a trajectory for sovereign power which was then wrested back from it at Westphalia. I have argued that Nicaea must be seen through a historically and contextually rich lens which keeps in the focus the fact that the fourth century Roman world was one fundamentally based on religions. The recent work of scholars like Keith Hopkins,²⁷³ A.D. Lee²⁷⁴ and Michael Lipka²⁷⁵ on the essential role which religion served as the ultimate organizing principle of the ancient Roman world suggests that a multi-national gathering such as Nicaea needs to be reconsidered in order to assess both its long term political implications and also to understand the event in a more contextually responsible way. A gathering of Christian bishops in today’s world may hardly attract notice and have little political significance, yet if one considers what kind of political impact a gathering of the Islamic religious leaders might portend for the Arab nations and the rest of the world today, one is forced to concede that context must be our guide when assessing the historical impact of a council such as Nicaea. The modern political involvement of religious entities such as Iran’s Guardian Council and the Ayatollah Ali Khomeini, for instance, in the tragic election crisis in Iran, 2009, should be evidence enough of just how large a role religion can play, and does play. In states where religion is considered by the majority of people as being far more important than politics,

²⁷³ Keith Hopkins, *A World Full of Gods: Pagans, Jews and Christians in the Roman Empire* (London: Weidenfeld & Nicolson, 1999).

²⁷⁴ A.D. Lee, *Traditional Religions*, *The Cambridge Companion to the Age of Constantine*, ed. Noel Lenski (New York: Cambridge University Press, 2006).

²⁷⁵ Michael Lipka, *Roman Gods: A Conceptual Approach* (Leiden: Brill, 2009).

gatherings of a religious nature become *de facto* political. This research suggests that Nicaea was exactly such a gathering.

In relation to sovereignty, Hudson sees western political theory's incompetent handling of the importance of religion as symptomatic and 'short sighted.' He writes:

Western political theory has tended to minimize the importance of religion in political and legal contexts. Indeed, many writers on politics assume that religion has no legitimate role. In civilized societies, they assume, religion will either die out or become so emasculated that it can be ignored for most practical purposes. It may play a symbolic role in times of crisis and ornament public funerals, but it has nothing substantive to contribute to the management of the state. This is a very narrow and short-sighted view, and one that takes little account of the role of religion in the Islamic world, in India, in Russia or in Catholic countries such as the Philippines.²⁷⁶

In today's context of religious diversity management and a worldwide increase in religious adherents, Hudson asks whether the sovereignty/religious governance relationship might be recast as discourse encouraging the social recognition of difference and thus be "constitutive of future legal positivities."²⁷⁷

My own research relies on some contextually rich historical material pertaining to the relationship between sovereignty and religious governance. In relation to Hudson's point about the recognition of difference, it is noteworthy that even at such an early stage in Europe's history, the fourth century, there was a concerted attempt to reconcile different segments of society in the vehicle of the, then, large and growing religion of Christianity. It is interesting to note, as well, that two millennia later we now face another divide in religion which has moved beyond the Christian rubric but which still intrinsically concerns it: and here I refer to the general tension which exists between radical Islamic sects and the "Christian" West. In keeping with the observation above on the changing of the political guard in the West, from religion in ancient times to the modern lionization of

²⁷⁶ Hudson, *Fables of Sovereignty*, 30.

²⁷⁷ Hudson, *Fables of Sovereignty*, 30-31.

finance, so the world is faced today with an oil rich Islamic Middle East which supplies a great deal of the world's oil needs and therefore has been, and continues to be, the site of the tragically obtrusive military conflicts of recent memory.

It may be reasonable to suggest that while the West has in some manner exchanged their Christian religion for the pursuit of money since the rise of republican states – the pursuit of which is currently dependent on a steady supply of oil – the Islamic nations, however, have chosen not to jettison their religious devotion. How Western nations, fundamentally entrenched as they have been in the Christian religion for centuries, cannot engage a more empathetic approach to dealing with Muslim nations is, at least from a historically architectonic perspective of religion generally – counterintuitive at best.

In such a tense and tenuous international environment, it would seem that respect of religious and cultural differences and priorities in the construction of a new notion of sovereignty are paramount pursuant to any chance it might have at being widely adopted. Why other regions of the world should have to countenance and embrace a definition of sovereignty which stems from a Christian era wherein human beings were routinely tortured and killed in maliciously brutal ways, amongst other devastating events such as the almost continual state of war, is a fact which must come across as woefully ignorant, regardless of how mollified the modern “definition” may have become. It would seem that given the concomitant strength and growth rate of Islam along with Christianity's place as the largest religion, any future arrangement of sovereign states and the assignment of the status of “sovereign” amongst states will have to be borne out of a constitutional apparatus which satisfies both sides of this religious equation. Perhaps a corollary to this observation might be the caution that if an arrangement of international

sovereign states does become a reality based on the assent of the Islamic nations and their Judeo-Christian counterparts, the other religions and cultures of the world should not be left to one side merely because they have neither the numbers or the financial clout to be heard. I suggest that such a tack would only be repeating the same mistake made by the two religions in question, and mistakes which cost the world millions upon millions of human lives.

Most of what lies behind the world's great religions is a plea that humans honour both God and other people. Perhaps such a common and bipartite theme would be enough to form a principle upon which to base future international constitutional instruments. One of the aspirations which the religions of the world will have to set down is any *a priori* expectation that the world will all ultimately convert to their own cosmology, theology, and eschatology. If world history has shown us anything, it is that religions which leave their humble beginnings for participation in state governance almost always use that power to further their religion's cause without any regard for the loss of human lives which accompany such a "mission." The world has been surfeited with such examples for far too long, and now the cooperative networks amongst states which exist today such as the UN and EU must have as their constitutional goal the furtherance of the principle of religious and ideological tolerance.

CONCLUSION

This present research is not concerned with crafting a nuanced definition of sovereignty based on the host of disparate suggestions, many of which now lay wounded by the side of the hermeneutical road of international legal theory. Instead, this research suggests that the very internal sovereignty which characterized the Late Antiquity Roman Empire²⁷⁸ was, itself, bequeathed to the Christian Church at Nicaea by fiat. In other words, this research is suggesting a starting point for the development of European sovereignty at which Europe's most enduring institution of eighteen-hundred plus years was the main actor: the Roman Catholic Church. Constantine's fourth century Council and its attendant corollaries of expanded and enforced jurisdiction and wealth for the Church meant that when the Empire finally shuffled East due to the Barbarian assaults on its erstwhile centrifugal city of Rome, the Church was left to pick up the gauntlet, so to speak, and stepped into the sovereignty vacuum left by the sudden absence of the Roman bureaucratic apparatus. Centuries later, when the states of Europe finally emerged with their own version of sovereignty, both internally and externally, the nations states were taking back the same gauntlet which the Christian Church and emperor were ultimately unable to defend.

I have cast the beginning of this research by showing that sovereignty was, for centuries past, always justified by deontological considerations. In fact, it is interesting to

²⁷⁸ Hinsley, *Concept of Sovereignty*, 276.

note that historically, theorists in general really tend to come out of the woodwork, as it were, whenever their society or paradigm is crumbling before their very eyes. This could be said of Plato, Aristotle, Cicero, Augustine, and most pointedly for this research, the political theorists of the cataclysmic Modern Period such as Jean Bodin and a host of others. Perhaps in some way these written works are in some way trying to explain the tragic events while attempting to maintain the core of their widely held beliefs which, in most cases, actually led to the catastrophes. In some sense these theorists may be unconsciously trying to account for their own commitment to these flawed world-views. Their paradigms were, perhaps, still very important to them and their writings are a way of saying, basically, ‘while I do not reject the essential truth of my worldview, I cannot endure the tragic consequences which it seems to have produced and so I must reconfigure it with hopes that greater order and civility amongst people will be the result.’ Order was the lynchpin aim of all of these theorists, primarily because they lived in contexts of such fundamental disorder. Each of their contributions was an attempt to move the conversation forward such that it would be more effective at “street level,” and each of them gave as their guarantor, the deity. Concomitant with the sponsorship of the deity was an assumption that political order stemming from this entity would be as good as the God who delivered it.

Not until the last two centuries has the idea of sovereignty been alone propped up by tenets such as interstate recognition, definable territory, and a population, all of which are ideas that are devoid of any stipulative moral content. Sovereign power was always defined in terms of the moral prerogative, and not merely a grocery list of state attributes which fail to insist on any requirement that state sovereignty must also be concomitantly

ethical or humane. Of course, as was the case with Europe in the seventeenth century, the fact that contextually necessitated definitions of sovereignty were justified in terms of moral rightness, had no effect on the disastrous outcomes of wars waged by those claiming sovereignty. The same could be said for the Greeks and Romans as well. One might argue that state sovereignty, as a theoretical construct, has never prevented a war or saved one single life, and unless some kind of moral imperative is attached to its designation on states, it may never do. On the other hand, one might alternatively suggest that even in its most brutal and ancient forms, internal sovereign power provided order and some measure of predictability pursuant to the everyday lives of people within states. In that way, then, sovereignty did indeed save lives by acting as a guarantor against lawlessness.

My intent is to now move ahead further in this line of research to better understand the etymological foundations for our modern understanding of sovereignty, in hopes that a more solvent international legal concept might be the result. My hope is that this present research helps better contextually color in some of the details pursuant to sovereignty's history in order to add positively to the larger conversation going on in the academy about sovereignty.

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