

**IS WORLD POLITICS RETURNING TO THE MIDDLE AGES?  
THE NEW MEDIEVALISM AND THE PROBLEMS OF AUTHORITY AND  
CHANGE IN INTERNATIONAL RELATIONS THEORY**

by

**MIKULAS FABRY**

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Department of POLITICAL SCIENCE

The University of British Columbia  
Vancouver, Canada

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**ABSTRACT**

The topic of international change is one of the most elusive areas of inquiry in the field of IR. While it would be hard to find in academic texts a more frequently used term than "change," the fact is that our grasp of the subject remains weak. There is no consensus among IR scholars either on the most appropriate approach to study international change or on the best way to differentiate between its various types.

This thesis seeks to contribute to our understanding of international change by exploring theoretically the problem of the most basic possible change – the process of replacement of a multi-unit system by a different kind of multi-unit system. Specifically, it examines the claims that the contemporary international system is in the midst of transformation, the results of which are in many crucial respects reminiscent of the way politics was conducted or structured in the Middle Ages. Political authority is said to be shifting from the state to other international actors and the emerging order can be likened to the medieval system of overlapping authority.

The following study shows that upon close inspection the idea of new medievalism cannot stand. Its central claim is that system transformations are legal revolutions in which one fundamental constitutive principle is being replaced by another. This principle specifies the manner in which political authority is distributed across the system. Political authority is above all a legal notion and the proper approach for investigating its fundamental change is jurisprudential. Analyzing the international society of states as a legal order requires us to look at the viability of its fundamental constitutive principle, sovereignty. There are at present no signs that would indicate it is being replaced. The neo-medievalists mistake political authority with power of performance and this leads them to faulty conclusions.

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## INTRODUCTION

The last decade or so has been a time of increased fermentation in the field of International Relations (IR). Though virtually no generation of scholars is devoid of those who make their living by periodically announcing “new epoch” and “fundamental change” in the way the world is functioning, the number of works that picture the present as a historical watershed has been rising exponentially. Even though the assertions in these works take on various forms, they share the lowest common denominator – they all suggest that what came to be regarded for about 350 years as a particular organization of political space is slowly but surely dying out. We are witnessing, it is said, the emergence of a new type of political ordering of the world. The metaphoric notion commonly referred to in the literature as “new medievalism” is a representative *prototype* of this intensifying trend to regard various recent developments in the spheres of international political economy, communication technology, political loyalties, the environment and human rights, some of them interconnected, as bringing about the most elemental shift in world politics.

New medievalism posits that the Westphalian framework of international organization centred around sovereign states is being at present transformed into a medieval-like order of multiple and overlaying authority. This is because “the cross-cutting and overlapping layers of authority are characteristic of both periods (Deibert, 1997b: 184).” What used to be a reasonably simple distribution of political authority among territorially circumscribed entities is today becoming a vastly more complex picture. States, it is maintained, have been forced to share their authority and loyalty of their citizens with both international governmental bodies like the European Union or the United Nations and transnational non-state actors such as transnational corporations (TNCs), ethnic groups, social movements and legal and illegal non-governmental

networks. While the state will not disappear or cease to be an important player, it will be, the neo-medievalists argue, only one of several important players making authoritative decisions.

Still, despite startling proclamations of "post-Westphalian system," "post-sovereign statehood," or "postinternational politics," some authors express frustration, at times even despair, at the inadequacy of IR theory to deal with the problem of change. John Ruggie (1993: 140, 143-4) laments that "no shared vocabulary exists in the literature to depict change and continuity...we are not very good as a discipline at studying the possibility of fundamental discontinuity in the international system." Ronald Deibert (1997: 213) echoes this observation when he questions the ability of the discipline to conceptualize change at all.

These views are no doubt correct. While it would be hard to find in recent academic texts more frequently used terms than "change" and "transformation", the truth is that our grasp of the subject remains tenuous at best. It is widely recognized that theorists of international relations have been poorly equipped for confronting problems of political change. There is no consensus among IR scholars either on the most appropriate approach to study international change or on the best way to differentiate between its various types. And yet these very difficulties did not prevent either Ruggie (1993: 140) from promulgating, in the same breath with his skepticism, "the emergence of the first truly postmodern international political form" or Deibert (1997: ix) from confidently asserting that we live in "postmodern world order...a quasi-feudal, multicentric system." If they themselves develop no theory of change, how do we know whether they are right or wrong? How do we know whether we are in the midst of change of international system which resembles in its scope the medieval-to-modern transformation? Is not, on the one hand, the lack of conceptual tools for analyzing change and, on the other, our own failure to come up with explicit theory(ies) of change, a double-edged sword? Should not we be

cautious before making what could turn out to be overblown statements about the world around us?

Yes, dozens of TNCs from the First World have higher sales than the GNP of dozens of countries from the Third World; the worldwide movement of finance is following the dramatic technological improvements virtually instantaneous; many non-governmental organizations have gained prominence on the world stage; some states are much more willing than in the past to delegate some of their governmental competencies to intergovernmental institutions; the majority of states has moved in a relatively short span of time in the direction of notable economic liberalization; world trade is growing faster than world production and in the case of the advanced economies intra-firm transactions across borders have been taking up a greater share of total trade; internal border controls within the EU are disappearing; ethnic groups in various places revolt. However, the question still remains: what do all these changes mean and in what sense are they important?

The answer is by no means obvious. Even though many who present these facts assume that they speak for themselves, facts never on their own speak for themselves. There are always counter-facts that can complicate the supposedly clear case. Ethnic intra-state violence was as rampant in the 19<sup>th</sup> century as it is today. The British East India and the Dutch East Indies Companies were chartered by their governments in the 17<sup>th</sup> century to raise armed forces and govern large parts of Crown territories in South and Southeast Asia and several German firms did the same in the 1880s in the four German colonies in Africa. Even the wealthiest corporations do not play such a role today. Global financial markets are not a "new force" either – the Vienna stock market debacle of 1873 almost immediately triggered the most severe economic recession in the 19<sup>th</sup> century (save the Napoleonic Wars) and the 1929 New York crash in a similar fashion caused an undeniably global Great Depression. Most countries did not have



sufficient power either to prevent or mitigate the adverse economic fallbacks from these disasters. Populations all over the world suffered immensely, resented their hardly-shaken, weakened governments, and yet the system of sovereign states persevered. Before these events the system had survived the considerable fiscal dependence of early sovereign states on private money markets and almost total lack of border controls for personnel until approximately the second half of the 19<sup>th</sup> century.

Thus what can appear to us at first as significant developments may not, once weighed against the past, look particularly striking. It is the task of theory to render facts and historical developments intelligible by distinguishing between those that are relevant (i.e. theoretically significant) and those that are not. It is the task of theory to end the endless exchange of contradicting facts. A theory is necessary to tell us which facts matter and which do not for our understanding of international change.

This thesis has two aims. First, it will closely examine the claims of the new medievalists that the world is experiencing change of similar scope to the medieval-to-modern transformation, only in reverse. Second, this study will develop a descriptive theoretical framework of systems transformation. The most critical questions this framework aspires to answer is: *how* does transformation of a system into a different *kind* of system occur? What does it entail? It will be descriptive because it seeks to establish primarily not *why* change of systems occurs (this would require a much larger study), but only *how* we can know whether a system is indeed of a distinct *kind* from the preceding one.

Whatever one may think of the merits of the neo-medievalist argument, its contribution would include the fact that it has compelled IR theorists to rethink many conceptions they had previously taken for granted. Intellectual alertness is always a beneficial commodity. By exposing the ahistorical nature of mainstream neorealist and liberal interdependence theorizing,

the new medievalists brought to our attention the importance of understanding international change and, as already noted, the limitations of the field in this respect. Perhaps most important is their insistence that fundamental shifts in world politics are always the consequence of change in authority structures (Ruggie, 1989: 31, Deibert, 1997: 8-9, Strange, 1996). This may not at first strike us as terribly revealing, but the IR discipline has ignored the problem of authority for decades and, as a result, political authority and its implications are only dimly grasped. The dissertation, applying at various points the insights of Hans Kelsen's legal theory and the so-called international society school, will demonstrate that even though the new medievalists are right in believing that the structure of distribution of political authority is the most essential for our understanding of international change at the most basic level, they misunderstand the meaning of political authority and, therefore, their conclusion about its dispersal in the direction of non-state, sub-state and trans-state actors is largely misguided. The proper approach for investigating questions related to political authority, it will be argued, is jurisprudential because this authority is at its core and more than anything else a *legal* category.

The thesis will proceed as follows. Chapter 1 looks briefly at several prominent attempts in the last decades to understand the *problematique* of system transformation. It then presents the idea of new medievalism as reflected in the IR literature. The special emphasis here will be on the contention that political authority is being scattered among a multiplicity of transnational actors. Chapter 2 first ponders the concept of political authority in general and then develops a theoretical framework which provides a dynamic picture of system transformation and links it to political authority. It proceeds to discuss political authority specifically in the modern state system. After clarifying common misconceptions concerning its import and ramifications, the chapter ends by outlining the necessary conditions for system transformation to come to pass in the present. Chapter 3 turns to the question of political authority in the Middle Ages. It also

provides an interpretation of the medieval-to-modern transformation based on the theoretical framework unveiled in chapter 2. Chapter 4 concentrates on the contrasts between the medieval and modern eras. Again with the formula of system transformation in mind, the remainder of the chapter then investigates whether it is possible to talk today about the emergence of a neo-medieval order. Finally, all major points of this inquiry will be again restated in the conclusion.

## CHAPTER 1

### System transformation and IR theory

One of the first attempts to confront systematically the phenomenon of system transformation was undertaken by Richard Rosecrance. In his view

System change may be said to occur when the internal constituents of disturbance and regulation are altered. All constituents of disturbance (goals or objectives, domestic security and stability, and resource potency) on the one hand and all constituents of regulation (institutional or informal mechanisms and the availability of goal-objects) on the other need not undergo transformation in order for system change to occur. It is sufficient that many or most of them be altered (Rosecrance, 1963: 13).

On the basis of this rather broad sketch Rosecrance examines the international system from 1740 until 1960 and concludes that in this period it transformed no less than nine times. Fundamental change in international politics thus, in his judgment, occurs on average every twenty five years.

This argument became a target of sharp criticism, most notably by Kenneth Waltz in his *Theory of International Politics* (1979). Waltz reproaches Rosecrance for erroneously analyzing the system through the prism of its constituent units and thus missing its assiduous features. Waltz is convinced that the explanation of the system transformation conundrum is locked at the level of the system and, more specifically, in its structure. This structure is defined by 1) the system's ordering principle, 2) the functional differentiation of units within it, and 3) by the distribution of power (understood as outcome-affecting capabilities, above all military and economic) across the system. For Waltz, system transformation occurs only when the system's ordering, organizing principle changes. He identifies two such principles: anarchy, characterized by no overarching authority and the sameness of units in terms of tasks they face in the system, namely self-help; and hierarchy, distinguished by a single highest authority and the differentiation of units through specialization of tasks they perform -- by the division of labour.

System transformation is thus change in the structure of authority (from anarchy to hierarchy or vice versa), even though what "authority" is or where it comes from in either

anarchical or hierarchical arrangements is never elaborated. Still, while according to Rosecrance change of the system takes place virtually every generation, Waltz fails to come up with even one historical example of such change. His focus, like Rosecrance's, is limited to the confines of the modern era and the only noteworthy change in it was the shift from the multipolar to bipolar distribution of power in 1945 (Waltz, 1979: 163). His book and also later work (1986: 327-30), nevertheless, imply -- and this is explicitly stated by other neorealists (Fischer 1992) -- that the medieval-to-modern shift was not a case of system transformation. The units competing independently of others and relying only on themselves, whatever their appellation, existed before as well as after the 16<sup>th</sup> or 17<sup>th</sup> centuries. The early modern era may have been significant in many respects, but not in changing fundamental patterns of power-politics behaviour in the condition of anarchy. These, as alluded by Waltz at one point, existed as much in the times of medieval Pope Innocent III (Waltz, 1979: 88) as they did in, for instance, the 19<sup>th</sup> century. While Waltz did not seek to reply to the question this thesis hopes to answer, we can reasonably surmise that he would reject the argument that we are returning to the Middle Ages -- for the very simple reason that we have never quite abandoned it.

Waltz's volume generated more critical attention than any other theoretical treatise on international politics in recent memory, but for our purposes the most interesting is the critique of John Ruggie (1986). Among other things, he disagrees with Waltz's account of system transformation and picks the medieval-to-modern shift to elucidate its deficiencies. Whilst Ruggie too believes that the Middle Ages were an anarchical epoch, anarchy being defined as a state in which "no one by virtue of authority is *entitled* to command; no one in turn, is *obligated* (italics -- Ruggie) to obey (1986: 134)," he argues that by dismissing the second element of structure, Waltz misses on a significant reservoir of change.

The modern system is distinguished from the medieval not by "sameness" or "differences" of units, but by the principles on the basis which the constituent units are separated from one

another. If anarchy tells us that the political system is a segmental realm, differentiation tells us on what basis the segmentation is determined. The second component of structure, therefore, does not drop out; it stays in, and serves as an exceedingly important source of structural variation (Ruggie, 1986: 142).

It is at this level that systems change takes place and in the particular case of the medieval-to-modern transformation this concerned the shift from the institutional framework of heteronomous lord-vassal relationships to that of sovereignty. It is also at this level, says Ruggie, that possible future transformation from sovereignty to "a postmodern international system" may occur.

The Waltz-Ruggie controversy, to which I will return in the subsequent chapter, did not solve the riddle of what system transformation is or how we know that it takes place. Some clarity into the debate about international change was, however, brought by Robert Gilpin (1981). He contends that there are three types of international change: systems, systemic and interaction. Systems change is a change *of* the system, its transformation. It involves a replacement of the principal systemic unit(s). The rise and decline of the Greek city-state system, the decline of the medieval system, and the emergence of the modern state system are for Gilpin (1981: 41) all examples of systems change. In the last two examples at least he is, hence, more in tune with Ruggie than Waltz. Systemic change, on the other hand, concerns a change in the governance of a system – in the distribution of power, hierarchy of prestige, and the individual rules and rights embodied in it (1981: 42). And lastly, interaction change refers to a change of interaction patterns or processes among the actors in the system. Systemic and interaction changes are modifications *within* the system, though their cumulative effect that may bring about systems change as well.

Gilpin concentrates mostly on analyzing systemic change and does not provide his view of *how* systems change, though he touches specifically on *why* the modern system displaced a pre-modern one (1981: 116-23) and finds several causes related to innovations in economic organization and military technology. At the end, though, Gilpin leaves us with an unresolved

tension. While the 16<sup>th</sup> and 17<sup>th</sup> centuries are for him clearly a time of systems change, he comes on the side of Waltz when he concludes that the character of “international relations has not changed fundamentally over the millennia (1981: 211).” What did then the medieval-to-modern transformation really change? Did the apparently coincidental accumulation of efficient innovations in trade, taxation, or the running of the government and inventions of gunpowder, pike, crossbow or longbow just favour the ascent of one set of political actors over another without changing anything fundamentally?

### The new medievalism in IR theory

The concept of new medievalism entered the vocabulary of IR theorists in the atmosphere of uncertainty about the meaning and implications of system transformation. It was first used by Hedley Bull in 1977. Though his study *The Anarchical Society* set to investigate above all the basis of order in the system of sovereign states and offers, unlike the theorists examined above, a static picture (I disregard for the moment that Ruggie and others have had doubts about Waltz’s dynamics), about one-third of its space was devoted to the exploratory discussion of alternative political systems. After considering the prospects for world government he turned to what he deemed to be a more plausible future scenario:

It is...conceivable that sovereign states might disappear and be replaced not by a world government but by a modern and secular equivalent of the kind of universal political organization that existed in Western Christendom in the Middle Ages. In that system no ruler or state was sovereign in the sense of being supreme over a given segment of the Christian population; each had to share authority with vassals beneath, and with the Pope and...with Holy Roman Emperor above (Bull, 1995: 245).

The achievement of this scenario, however unlikely, seemed more probable than central global government because

It is familiar that sovereign states today share the stage of world politics with ‘other actors’ just as in medieval times the state had to share the stage with ‘other associations’. If modern states were to share their authority over their citizens, and their ability to command loyalties, on the one hand with regional authorities, and on the other hand with sub-state and sub-national authorities,

to such an extent that the concept of sovereignty ceased to be applicable, then a neomedieval form of universal political order might be said to have emerged (Bull, 1995: 245-6).

Though Bull never precisely defined what he meant by “authority” or when can we indeed say that “sovereignty ceased to be applicable”, the idea of new medievalism caught the imagination of scholars who were searching for a suitable metaphor to describe contemporary changes in world politics. In 1987 James Der Derian (1987: 79-80) in his book on the history of diplomacy, evoking Bull but shifting from speculative to affirmative tone, mused that “beset by internal disintegration and external regional combinations, the state is losing its previously unchallenged supremacy as the most significant entity in the international system...it would be blind not to recognize that there are power struggles going on which bypass, cut across, and even undermine the supreme authority of the state.” While Der Derian lists samples of “transnational forces” such as the EU, international terrorism, the World Bank or the Trilateral Commission which he says may “reactivate some of the [medieval] proto-diplomatic practices,” we are, again, not told what the supreme authority of the state exactly entails and how it can, then, be undermined.

Indeed the lack of definitions and clear methodological standards and, at the same time, the presence of sweeping and bold judgments has become typical in the neo-medieval and system transformation literatures and has represented a departure from Bull’s chary tone.<sup>1</sup> Ken Booth (1991: 542), for example, summed up the challenges for IR theorists in the 1990s in these stark terms:

Sovereignty is disintegrating. States are less able to perform their traditional functions. Global factors increasingly impinge on all decisions made by governments. Identity patterns are becoming more complex, as people assert local loyalties but want to share in global values and lifestyles. The traditional distinction between ‘foreign’ and ‘domestic’ policy is less tenable than ever. And there is growing awareness that we are sharing a common world history.

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<sup>1</sup> In fact, Bull was highly skeptical of the possibility of any return to the Middle Ages. His investigation concluded that “despite the existence in principle of alternatives to the states system of various kinds, there [is] no clear evidence that the states system [is] in decline (Bull, 1995: 307).”



However, despite Booth's audacious words, his essay contains neither an exegesis of sovereignty nor a crucial discussion of the nexus between, on the one hand, sovereignty and the ability to perform states' "traditional" functions and, on the other, between sovereignty and people's identity.

Ronnie Lipschutz (1992: 400) is more elaborate when he claims that global civil society is emerging which mirrors the type of supranational civil society that existed before the 17<sup>th</sup> century. This society, composed of the conscious association of actors who link themselves together for particular political and social purposes, challenges from below the nation-state system and denies "the primacy of states or their sovereign rights" (1992: 390-2, 398). Though Lipschutz's relatively meager evidence of environmental, human rights and indigenous networks does not make clear how severe this challenge is or how it inexorably incapacitates the states system, the essay does provide insights into the origins of global society. Its emergence, the author insists, is a result of three interrelated developments: 1) the leaking away of sovereignty from the state both upwards, to supranational institutions, and downwards, to subnational ones; 2) the decreasing ability and willingness of governments to undertake a variety of welfare functions; and 3) the crumbling of old forms of political identity, centred on the state, and the growth of new forms of political and social identity based on ethnicity, geographical locality, religion, ideological convictions, or sexual orientation (1992: 392, 399, 415). The rise of global civil society has been facilitated by a "norm-governed global system rooted in the global capitalist consumer culture" (1992: 392). This newly dominant "operating system" in global politics, in essence "liberalism with the individual at its core," has come to fill a role similar to the body of rules proclaimed by the medieval Church (1992: 407).

Having looked at various changes in international relations a decade after his criticism of Waltz, the possibility of postmodern international system became for Ruggie (1993) an emerging

reality. This is because, in Ruggie's view, the relevance of one of the key notions of the Westphalian system – territoriality – is being crippled. Territoriality is becoming “unbundled” and the system is moving towards transterritoriality, a distinguishing feature of the Middle Ages. The author points to several phenomena. In the international economy it is increasingly difficult to distinguish between internal and external as foreign TNCs become leading exporters even in the biggest economies. IBM is, for example, Japan's largest computer exporter and Sony is the largest exporter of television sets from the U.S. (1993: 172). The intricate form of the EU which, according to Ruggie, makes it neither an international organization nor a federal state but the first “multiperspectival polity” since the advent of the modern era, makes demarcation between the domestic and the international in the dealings among Western European states increasingly unfeasible (1993: 172).

As far as global environmental problems are concerned, even if there is no agency that would strive to replace the state in providing solutions to them, “the state itself acts in a manner that expresses not merely its own interests and preferences but also its role as the embodiment and enforcer of community norms – a multiperspectival role, in short, somewhat in the manner of medieval rulers vis-à-vis cosmopolitan bodies of religion and law (1993: 173).” Lastly, Ruggie draws attention to the emerging security arrangements in Europe which are non-competitive and communitarian in nature. They provide for the degree of collective legitimation unparalleled elsewhere (1993: 173). Collectively, all these developments imply that the modern system, territorially defined and mutually exclusive, is in the process of being transformed into a tangled transterritorial system of rule.

Regrettably, Ruggie does not establish the connection between these observations and his earlier identification with the view of sociologist Gianfranco Poggi. In his critique of Waltz he invokes Poggi (1986: fn. 18) who maintains that “[feudal anarchy] arose from the fact that the

system of rule relied, both for order-keeping and for the enforcement of rights and the redress of wrongs, on *self-activated* coercion exercised by small, privileged class of warriors and rentiers *in their own interest* (italics -- M.F.).” If we concur that both behavioural patterns (acting in the community interest and self-interest) manifested themselves throughout the Middle Ages, can it then be argued that we are entering a “postmodern world order” just on the basis of (partial) resemblance in behaviour? After all, Ruggie insists vis-à-vis Waltz that it is the change of the “institutional framework on the basis of which constituent units are separated from one another” that makes system transformation. What is this emerging *institutional* framework? The EU may appear to function in a “multiperspectival” fashion, but is it also a neo-heteronomy?

Ruggie’s themes have received further treatment by other scholars. Ole Waever, for one, focuses on the neo-medievalism in the EU. He postulates that

The medieval system consisted of a complex patchwork of overlapping authorities. The right of governments were territorial but they did not imply mutual exclusion, whereby one state’s exclusive competence to legislate or levy taxes excluded another. Europe today is characterized by similar criss-crossing authority relations (Waever, 1995: 421).

Waever agrees with Ruggie’s assessment that the EU is a peculiar, albeit likely permanent, midpoint between an intergovernmental body and a federal state where issues are neither foreign nor domestic and adds that the EU’s significance lies in the fact that within it there is no longer a primary political level (Waever, 1995: 422-4). While Waever argues that as a whole the system in Western Europe has moved into a post-sovereign (i.e. postmodern, neo-medieval) phase, he nevertheless strongly denies that sovereignty at member (state) level is eroding. His arguments remain, nevertheless, rather puzzling because, setting aside the fact that sovereignty is never unequivocally defined, the article contains statements such as: “at the end of the day, control over the Union rests with the national governments acting collectively” and “the process of policy

making...still takes the form of agreements between governments" (Waever, 1995: 426), which is, of course, precisely how "conventional" international organizations work.<sup>2</sup>

Issues of international political economy are the principal focus of Susan Strange's analysis (1995, 1996). Strange (1995: 56), directly referring to the concept of the new medievalism, argues that the state authority has decisively and irreversibly shifted "upwards, sideways, and downwards," or from the state towards various non-state actors and local, regional and international authorities. In addition, in some matters authority did not leak away anywhere, but "just evaporated." The actors with freshly acquired authority would include not only transnational enterprise, including banks, insurance and telecommunications companies, accounting and law firms, and organizations like the IMF and Inmarsat, but also non-governmental organizations like Amnesty International, the Olympic sports organization, transnational associations of doctors, economists, and scientists, and even crime syndicates (1995: 56, 1996). State authority is the weakest in Africa and in the former Soviet Union. There "authority is divided between the formal institutions of the state and local potentates, chiefs or gang leaders; between vassal and suzerain, the responsibility for keeping order is as unclear as it was in the Middle Ages (1996: 189)."

Unlike many other authors, however, Strange clearly communicates what she means by authority. Authority is for her "the power to alter outcomes and redefine options for others (1996: 184)." As for market actors specifically, their authority rests in their ability to determine "the who-gets-what" (1996: x). It is this functional capability combined with the performing impotence of the "defective state" that makes them political players. In the global economy that is said to have sprung up, private market forces are becoming true masters of economic policies,

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<sup>2</sup> This confusion is compounded by the conclusion of another of Waever's articles on Europe. In his piece two years later Waever (1997: 86) remarks, without further elaboration, that states of the EU "are not sovereign, but nor is the EU a sovereign state." His strong insistence on sovereignty of the EU member countries is thus reversed without explanation.

and state economic decisionmaking is less important than in the past. Put simply, world markets are more powerful than states. The progressive loss of state control over capital flows, large corporations, taxation, currency, stock and bond trading, foreign trade, exchange rates, and money supply, but also over the flow of ideas, culture, mafia and terrorist organizations, satellite remote sensing, environmental problems, and social welfare and labour policies, points to the “hollowness” of state authority.

Still, Strange notes a daunting paradox. State authority has not been declining and shifting to market authority by a series of accidents, but to a large extent as a result of state policies themselves. It was not that the TNCs “stole or purloined power from the government of states. It was handed to them on a plate – and, moreover, for ‘reasons of state’ (1996: 44-5).” What are, however, conceivable “reasons of state” for which states would go at great lengths to weaken their authority? Why would they voluntarily adopt policies that they know would eventually lead to TNCs acting as competing political authority? Unfortunately, instead of addressing directly these critical questions, Strange merely brings out Fernand Braudel’s and Karl Polanyi’s argument that, historically, “the relation of market authority to political authority has never been stable for long, and that at different times and in different places the pendulum has swung away from one and toward the other and back again, often in ways unforeseen by contemporaries (1996: 45).” If that is the case, how can she claim with confidence that the current changes in international political economy are *irrevocable* and the world is, therefore, in the midst of change of the Westphalian system into a neo-medieval one? Strange’s argument leaves one puzzled even before examining whether her rendition of political authority is tenable.

Most recently, the neo-medieval literature was enriched by Ronald Deibert’s study (1997) of the effects of large-scale advances in modes of communication on politics at the world level. Deibert observes that several big historical changes were preceded by changes in the way

communication was conducted. He contends that this was no coincidence. He suggests possible similarities between, on the one hand, the impact of the invention of printing press by Gutenberg in the second quarter of the 15<sup>th</sup> century and the medieval-to-modern transformation and, on the other, between the effect of dramatic improvements in the speed of communication, including the appearance of the Internet, and the transformation from modern to a postmodern, medieval-like order. The study of world order and its transformation, Deibert insists, is properly the study of structure and alteration in structure of political authority, which he defines as “the right to set the rules of the game.” He categorically rejects the idea that authority implies the ability to control flows or to act autonomously (1997: 8-9).

The interpretation of political authority as the *right* to set rules is clearly different from Strange’s. Unlike Deibert, she is convinced that political authority is the *actual power* over outcomes. Given his exegesis, one would naturally expect Deibert to concentrate primarily on *how* the right to set rules is accorded and structured in the medieval and modern eras and *how*, under the impact of changing modes of communication, it is restructured into the modern and postmodern systems of authority – i.e. lost in one domain and gained in another. For the most part, however, his study does not probe the notion of the right to rule. We do not learn either where the right to rule in the contemporary international system comes from or how it is being redistributed today. We are told that current changes in communication technology favour global market forces and transnational social movements over states, but in what sense do they imply a *right* to determine rules?

Deibert urges readers to distinguish between political authority and the ability to control flows or act autonomously, but ignores this exhortation beyond his introduction. In the course of his book he contends that, at least partly due to changes in communication technology, “the change...that occurred during [the late medieval] period was critical to altering the distribution of

power among social forces and in rethreading the dominant web-of-beliefs of the time.” Today, “the transnationalization of production and finance is gradually undermining the effective power of state regulatory systems,” “states around the world have engaged in progressive liberalization measures to meet the disciplinary interests of transnational capital,” and “global civil society networks...are able to influence politics...within and across states” (1997: 109, 156, 206, 174). All of these statements refer to *actual power* over outcomes of the game – they do not reveal any possible transfer of the *right* to set rules of the game. Hence, Deibert, like Strange and contrary to his own definition, believes that power over outcomes implies authority. If there are now non-state actors whose extraordinary wealth or superb ideas can move around with unprecedented speed and if they can often make governments do as they wish, this surely must imply that “the emerging world order can be likened to the Middle Ages (1997b: 183).” Does, however, monetary or ideational *might* lead automatically or inevitably to political *right*? Even Strange at one juncture hesitates on this question. Deibert does not deal with it at all – his conclusions just assume the answer is in the affirmative.

At this point it should be emphasized that the doubt about the current prospects of the system of sovereign states is by no means exclusive domain of those who invoke in their analyses the Middle Ages. Many other observers talk about an emerging order with multiple and overlapping authority without expressly suggesting that it is reminiscent of the medieval one. The conviction that territoriality, sovereignty and state authority are being increasingly undermined is, for example, strongly discernible in the so-called “globalization” literature. Globalization is said to have condemned territoriality towards irrelevance because it involves “processes whereby social relations acquire relatively distanceless and borderless qualities, so that human lives are increasingly played out in the world as a single place...the world has become one relatively borderless social sphere (Scholte, 1997: 15-6).”

According to the same author, the consequences for sovereignty are even more devastating. The present era marks the end of sovereignty and the beginning of what he calls post-sovereign statehood: "globalization has rendered the old core principle of sovereignty unworkable... both juridically and practically, state regulatory capacities have ceased to meet criteria of sovereignty (Scholte, 1997: 21-9)." Richard Falk (1993: 853) seconds this view:

The globalized "presence" of Madonna, McDonald's and Mickey Mouse make a mockery of sovereignty as exclusive territorial control. A few governments do their best to insulate their populations from such influences, but their efforts are growing less effective and run counter to democratizing demands that are growing more difficult to resist.

In less anecdotal terms, a recent sociological study adds that "globalization has entailed a partial denationalizing of national territory and a partial shift of some components of state sovereignty to other institutions, from supranational entities to the global capital market (Sassen, 1996: XII)."

One of the few theorists willing to look closely at the intricate issue of authority is James Rosenau. Like Susan Strange, Rosenau argues that authority has been relocated from the state in the direction of those entities most able to perform effectively. States have become weak enough to be rivaled by another system of actors and "a bifurcated system [has emerged] in which actors in the state-centric world compete, cooperate, interact, or otherwise coexist with counterparts in a multicentric world comprised of a vast array of diverse transnational, national, and subnational actors (Rosenau, 1992: 256)." Authority is presently so widely diffused within, among and outside states as to minimize – and in some cases even to abolish – hierarchical distinctions between states and other international actors (1992: 256).

For Rosenau, authority relations are to be found wherever people undertake collective tasks – in families, classrooms, religious groups, unions, sport teams, business companies, revolutionary and terrorist movements. They cannot be limited, the argument goes, to formal structures in which the source of authority can be documented (1992: 259). He argues that to speak of the relocation of authority is to refer to changes in the locus of initiatives and responses



in *control* (italics – M.F.) relationships (1992: 259). Still, on the same page he defines authority relationships as “those patterns of a collectivity wherein some of its members are accorded the *right* (italics – M.F.), or take initiative, to make decisions, set rules, allocate resources, and formulate policies for the rest of the members, who in turn comply with, modify, reject, or otherwise respond to the decisions, rules, and policies.” If we accept that there are non-state actors who possess authority by *right*, it still must be analyzed if and how their right to set rules differs from that of the state. Is state authority to make decisions really the same as authority of a soccer team coach, a Lutheran pastor, a bank president or a leader of armed insurgency group? After all, all of these actors were around 100 years ago, set rules in their respective domains, and yet we did not talk about a system of multiple and overlapping authority.

After epitomizing the dilemmas surrounding the issue of system transformation, the chapter has provided a survey of the leading arguments of those who see various changes in the contemporary international system as deeply transformational and leading towards a medieval-like world order which is characterized by political authority dispersed among a multitude of international actors. Nonetheless, it emphasized that pinning down in explicit terms what the state's authority is and/or using this definition consistently and/or elucidating the empirical correspondence of state authority with authority of non-state actors represents a major challenge for these theorists. Is the unstated presumption that for its authority to make sense the state is or should be omnipotent and omniscient entity able to assert control in every area of human life, correct? If the state cannot totally control transborder investment flows or corporate tax evasion or deliver various social welfare programs, is its authority “eroding” and “being transferred” to those who can ostensibly achieve their political goals? Must production processes

be essentially confined to one state for state authority to make sense? And is it production or authority (or both) that has to be territorial?

The next chapter focuses on these questions. It will define political authority, show what the term means with respect to the states system and indicate why it cannot be confused with effective power over outcomes. It will also establish the conditions necessary for a change of the states system.

## CHAPTER 2

### What is political authority?

To show what political authority is one must necessarily begin with the discussion of politics. Ruggie (1993:148) posits that "politics is about rule" and quotes Anthony Giddens who defines "any system of rule" as "comprising legitimate dominion over a spatial extension." When combined these statements implicitly suggest that in the Hobbesian state of nature politics is impossible -- in the war of all against all terms such as "system of rule," "legitimate dominion," "organization of political space," or "political structures" cannot have any meaning. Politics is conceivable solely in the condition of at least minimal order. Order, according to Hedley Bull (1995:3-4), must exhibit pattern or regularity in relations among individuals or groups that leads to a particular result. It can in principle entail only pure corporal coercion: individual or group A can enforce compliance of individual or group B for the very simple reason that A possesses more force than does B. The result of this order, hence, is the complete domination of A and forced submission of B. But this order is minimal as it consists of only *one* rule: the rule of the stronger. As soon as the coercive capacity of A declines or B grows stronger, the order tumbles.

A *system* of rule is more stable and permanent than minimal order as it comprises more than just the presence of raw coercion or the rule of the stronger. It relies at least to some degree on acceptance and voluntary compliance, that is, on consent. This is what Giddens means by *legitimate* dominion. And it is here that the concept of political authority fits because it refers to the *right*, which is always granted and acknowledged by somebody, "to command and correlatively, the *right* to be obeyed (Wolff, 1990: 20)." This right reflects the breadth of the expressed acceptance and is in any realm institutionalized in a lasting form by a set of concrete

and specific regulations which we usually call *law*.<sup>3</sup> Crucially, the notion of *right* goes hand in hand with the notion of *duty* – at minimum duty entails refraining from activities that one does *not* have right to do (i.e. compliance with law). Right without duty is unintelligible: only Hobbes' state of nature is a realm of *pure* right and *no* duty.

If we accept that a system of rule contains a structure of authority and that *authority does not exist without right and right does not exist without law and legitimacy*<sup>4</sup>, then we can best evaluate the prospects of that system of rule (i.e. continuity and change of it) by jurisprudential analysis: by comparing accepted practices and actions *in relation to* the existing legal rules and the extent to which they are complied with or violated. This means that if we want to evaluate the prospects of, say, the current states system, we have to look at the conduct of states, TNCs, NGOs, ethnic groups, international organizations, transnational organized crime and other international actors in relation to the current international legal order.

Bull (1995: 65-7) identifies three types of rules (in declining importance): 1) fundamental constitutive principle, 2) rules of coexistence, and 3) rules of cooperation. The fundamental constitutive principle is what Hans Kelsen (1945: 111, 116) dubbed basic norm (*Grundnorm*) or “a norm validity of which cannot be derived from a superior norm...it is valid because it is presupposed to be valid.” All rules in a system of rule flow from this basic norm, which has to be

<sup>3</sup> Law is used here in the wide sense of the term. It includes all written and/or unwritten rules that are at some point endorsed as permanent, binding and compulsory.

<sup>4</sup> By *legitimacy* I denote here something collectively accepted, respected and regarded as part of the normal, proper state of affairs (Philpott, 1995: fn. 5), regardless of whether the accepted phenomenon is *actually* right or wrong in the eyes of a particular ethical stance. Significantly, this includes also acts that are deeply disliked, but about which actors for whatever reason chose not to do anything. The Warsaw Pact invasion of Czechoslovakia in 1968 was legitimate not in the sense this military intervention was in accordance with what was considered proper and normal behaviour or in the sense that it was morally admissible, but because to do something about it was deemed unacceptable or wrong by those who, like the U.S., could oppose the invasion through coercive means. The normal, proper state of affairs for them was to accept the Soviet military occupation. Legitimacy thus can be expressed either by 1) an explicit approval or 2) by a *conscious, reasoned and deliberate* decision not to oppose an activity because such opposition is thought to be either wrong or impossible. Non-legitimacy, on the other hand, always evokes a coercive response.

justified in extra-legal, normative terms.<sup>5</sup> *The basic norm both forms and justifies the basis on which political authority is distributed and various actors present in a system of rule are ordered.*

Both Waltz and Ruggie, as seen, agree that systems contain a fundamental constitutive principle<sup>6</sup>, but in contrast to Kelsen they are unable to keep the jurisprudential and the sociological separate and this leads to considerable confusion. The organizing principles historically have never been called ‘anarchy’ or ‘hierarchy’ – these are mere descriptive terms for the *type* of organizing principle. In fact, what Ruggie defines as anarchy is, as we shall later see, sovereignty, the ordering principle of the modern states system. His exegesis of anarchy is, however, at odds with the legal heteronomy of lord-vassal relationships, which, as Chapter 3 will show, was actually a hierarchic organizing principle that presupposed a single authority on the top *entitled* to govern and a strict division of labour. Ruggie conflates the sociological connotation (1986: fn.18) of the term ‘anarchy’ (substantial segmentation on the ground) with the jurisprudential one (lack of central authority in law). Sovereignty and vassalage are not some adjuncts of anarchy, as he insists (1986: 143), but are, as fundamental organizing principles, the first element in Waltz’s framework of international political structure.

Waltz got it right when he argued that the second element of structure in the modern state system dropped out, but his use of ‘anarchy’ in both jurisprudential and sociological sense leaves us in murky waters. In the modern state system states have been “like” not in sociological, but in legal sense. They have all been sovereign equals with nobody above entitled to command them (1979: 88). This is one line (and the accurate one) of Waltz’s argument. The second one is that in both eras they exhibited strong traits of self-help behaviour (1979: 88, 111). But that

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<sup>5</sup> The logical implication of this argument is that all legal orders are also normative orders, favouring one cluster values of over others.

<sup>6</sup> Constitutive, organizing and ordering principle are used as synonyms.

does not mean that both historical periods can be labeled 'anarchy,' because in contrast to the modern state system, in the Middle Ages the constituent units were legally differentiated and, with the exception of the Papacy, were *obligated* to obey somebody. The two eras represent two distinct authority structures and should be treated as such, even though they may display similar behaviour. If our aim is to examine continuity and change of a particular legal order, then a sociological method of inquiry, which consciously or unconsciously *divorces* itself from the existing legal realities in order to find objective patterns of behaviour (the "real" rules) can indeed mislead us. The danger is that the definition of structure may become unclear: it becomes a confounding mix of legal and behavioural factors.

How should we judge continuity and change of legal realms? The realm most predisposed to continuity is that in which acceptable conduct is not only institutionalized in a set of laws, but is also observed in practice. In it the words "legality" and "legitimacy" can be used virtually interchangeably. Illegal behaviour there must not only be said to contravene the proper, normal and accepted state of affairs – it must also be stopped and eliminated. A system of rule needs to have an effective enforcement mechanism in order to persevere. Otherwise, the more "legality" and "legitimacy" diverge in a realm, the more can the continuity of that realm be doubted. The most serious transgressions -- those that imperil the very system of rule -- are the ones that directly undermine its fundamental ordering principle.<sup>7</sup> Only acts justified *outside* of the legal order (i.e. *incommensurable* with the fundamental ordering principle) in question carry a transformational prospect and can be considered such transgressions. *A realm of rule is transformed after the gap between legality and legitimacy widened or contracted enough so that*

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<sup>7</sup> There are, of course, different kinds of violations of law – an illegal military intervention about which nothing is done is much more threatening to the international system of rule than breaching a treaty on fishing quotas about which nothing is done. Likewise, in a domestic system of rule pilfering is a distinct kind of violation from mass murder – it is easier to do nothing about the former than the latter. One must not also forget that some acts, like marihuana smoking, prostitution or scalping in Canada, are illegal but can be widely socially accepted. Despite the gap between legality and legitimacy they create, these delicts do not threaten the domestic system of rule.

*a new prevalent structure of distribution of political authority which reflects a different fundamental constitutive principle can be said to have been established.*<sup>8</sup> *System transformation is, hence, a process of replacement of one constitutive principle by another.*

An example that contains both types of systems transformation would be the process by which a polity is established from the Lockean state of nature. John Locke's *Second Treatise of Government* (1980) starts by the depiction of peaceful and harmonious environment of the state of nature. People there behave initially in accordance with the binding law of nature, which is given by God and detectable by reason. According to this law, they have the *duty*, among other things, to protect each other's life and possessions. They also overwhelmingly do so in practice – law and legitimacy are tied very closely. When “minor inconveniences” occur and natural law is violated, individuals have the *right* to enforce it and remedy the situation. Those who attempt to kill or steal can be lawfully and legitimately stopped and even punished by affected individuals. However, as more and more property is accumulated, as the land becomes scarce and as the money economy develops, the number of conflicts over holdings dramatically rises, natural law is increasingly violated, and the scheme of individual enforcement is insufficient and eventually falls apart. Now many kill and steal and, alarmingly for the system, those not affected abide indifferent as they look after safeguarding their own assets. The system of rule in the state of nature is being transformed – it is disintegrating. The discrepancy between what is allowed in natural law (*legality*) and the actual practices which violate that law and are deliberately unopposed (*legitimacy*) is stretched to a point where, not unlike in Hobbes' state of nature, both legality and legitimacy are close to losing any meaning. An equally radical contraction (and another change of system) takes place in a moment when a constitutional government which has

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<sup>8</sup> This includes the cases in which, as a consequence of radical stretching of the gap, no discernible basic norm and structure of authority are present.

the *duty* to stop and punish killings or thefts and the *right* to use all the necessary means for this purpose, is established and acts on its mandate.

### Political authority in the contemporary international system

If, unlike in Locke's hypothetical case, a realm contains more than just one dominion with political authority (as indeed has always been the case in world history), a political arrangement that aspires for continuity and stability requires specification of where *final* authority lies. *Political systems with multiple locations of political authority can be said to be transforming when and only when the structure of distribution of final authority is in the process of being altered. One fundamental organizing principle allocating final authority must be replacing another.* A dominion with recognized final authority, if it exists, has the right of ultimate sanction over all matters that it defines as political (Thomson, 1995: 214). These matters are also referred to as *public* and it is over these matters that the dominion has the right of enforcement. What we call "state authority" is by its very nature public authority. It has to be sharply distinguished from what Strange and Rosenau note as authority of non-state (*private*) entities. These entities may have at times significant "power to alter outcomes and redefine options for others," but they do not have either the right to command or the right to be obeyed in what the state has determined to be public matters. Most importantly, of course, they do not have the right to use force.

Their "authority" rests on purely *voluntary* acknowledgment of those who have chosen to be guided or influenced by them. A Protestant pastor may have great moral influence over the way his congregation members behave (*power* over outcomes), but he does not have the *right* to use physical coercion or punishment to bring their obedience. Moreover, his influence is limited to those who chose to be influenced by him. On the other hand, a particular policeman or a judge



may enjoy no particular moral prestige, but they possess the right, under specified circumstances, to use coercion. According to Michael Oakeshott (1975: 321-2), public authority in part signifies a formal consideration, independent of all others, in which an utterance or an action is identified, understood and responded to, not in terms of what it prescribes or of the personal qualities of an agent or the confidence he inspires, but in relation to an office, a practice or a procedure, or a rule recognized as such.

The other characteristics of public authority is that decisions in its name are *mandatory* for all within the jurisdiction – not just for those who decide to comply. One has the right to defy a church leader, a soccer coach, a union boss, a teacher, but not the right to disobey the state.

Many authors use the term “authority” interchangeably with “power over outcomes” or “the ability to make others do what they otherwise would not have done.” Authority and power, however, cannot be used as if they were synonyms, for they refer to two very different conditions and must not be confused. Oakeshott (1975: 321-2) rightly complains that

The authority of an office of government has been confused with the characters, dispositions and beliefs of those who occupy it, with the alleged merits of its prescriptions in terms of their reasonableness or wisdom, with whether or not they are consented to by those who come within its jurisdiction, with the wants, interests or expectations they design to satisfy or actually satisfy, and with the apparatus of power available to make them effective.

Power is not a sufficient condition to establish political authority and less (or a loss of) power does not imply less (or a loss of) political authority. Authority in the public realm is an entitlement and is, therefore, a possessional, not a relational, phenomenon, as Rosenau (1992: 260) erroneously believes.

If political authority is an entitlement and, as argued, consists of two distinct elements -- 1) a juridical or quasi-juridical arrangement of some sort, and 2) legitimacy – where does political authority of the modern state come from? The following part will show that, in contrast to Hobbes’ or Locke’s polities, its political authority comes from *the outside*. It is constituted and distributed territorially to bounded entities by bestowing them with the juridical property of *sovereignty* and, thus, also international legitimacy. To prove this assertion may seem a rather

mighty task: after all, it has been suggested numerous times that the word “sovereignty” is so nebulous as to be rendered virtually meaningless. As Michael Fowler and Julie Bunck (1996: 398) pointedly note, the concept of sovereignty has been used not only in different senses by different people, or in different senses at different times by the same people, but in different senses by the same person in rapid succession. In a different study they add that sovereignty is variously professed to have been “perforated, defiled, cornered, eroded, extinct, anachronistic, even interrogated (Fowler and Bunck, 1995: 2).”<sup>9</sup>

However, despite this seemingly insurmountable confusion, an investigation of sovereignty is possible. Alan James (1986), for instance, took great pains to examine various meanings of the term ‘sovereignty’ and came to a rather remarkable conclusion. Even though politicians, civil servants, journalists or IR theorists may for whatever reasons use ‘sovereignty’ in different senses, the actual practice of states has corroborated its original and only purpose – to delineate and *separate* spheres of final political authority. Sovereign entities are legally a part of no larger constitutional arrangement (1986: 25), which is the same as saying that they are legally subordinate to no other entity. Which is the same as saying that final and absolute political authority resides in the state and that no final and absolute authority over the state’s territory exists elsewhere (Hinsley, 1986: 26). As K. Middleton (1969: 153) observes, sovereignty “is properly, and can only be, a legal conception...it is a matter of political authority and not of political power.” It implies nothing about power relations either among states (Frost, 1986:100-1) or between states and other international actors. Sovereignty is an absolute and indivisible, not relative, notion – it either exists or it does not; and it cannot be eroded but only extinguished.

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<sup>9</sup> One can add to this list, after seeing several examples in the previous chapter, “lost,” “transferred,” “transformed,” “diminished,” “relocated,” “redefined,” “undermined,” “diluted,” “bifurcated,” “truncated,” “diffused,” “subdued,” “loosened,” “limited,” “bargained away,” “withered away,” “circumscribed,” “superseded,”

A state (and its authority) is established when and only when it is recognized as a sovereign entity by other, already sovereign states. As Bertrand de Jouvenel (1957: 180) maintained more than four decades ago: "sovereignty is entirely inseparable from the state... sovereignty is the summit of authority, by means of which the state is *created* (italics – M.F.) and maintained." Sovereignty is thus not an intrinsic quality of states – statehood cannot be achieved from within. Ole Waever's contention that sovereign states of the EU can exist within a post-sovereign system is impossible to fathom, for their sovereignty comes from the system to begin with. Because of this basic truth, the questions with respect to the present and future viability of sovereignty must be addressed at the system, not unit, level. It is not a particular state that must work for sovereignty to make sense. It is the system of states that must work.

When the international society of states confers sovereignty on a territorial unit, this amounts to acknowledging that the entity has the right to govern itself independently of other entities. This right, of course, includes the necessary ingredient of political authority – the right of enforcement in what are determined to be public matters. However -- and this is often forgotten or ignored – sovereignty does bestow not only right, but *duty* as well. Above all, a freshly recognized state is obliged to respect international law (both customary law and any treaties it might have acceded to), a body of binding rules created and applied by sovereign states. The international society of states seeks this way to ensure through this conformity its own continuity: what is allowed in law (*legality*) and what is allowed to occur in practice (*legitimacy*) must be in most places most of the time one and the same thing. Thus, when a state is recognized as sovereign, it automatically and unavoidably commits itself to the preservation and maintenance of international society.

Hedley Bull and Adam Watson (1984: 1) define international society as a group of states “which not merely form a system, in the sense that the behaviour of each is a necessary factor in the calculations of the others, but also have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognize their common interest in maintaining these arrangements.” Since most rules have the status of law, Barry Buzan (1993: 346) contends that international society should be understood as primarily a legal construction. How can we, then, using Bull’s taxonomy or rules listed in the first section of this chapter, understand the regulations which make functioning of this society possible?

Sovereignty which assigns final authority over a territorial domain and thus establishes its constitutional independence is the fundamental ordering principle of international society on which the whole international legal structure then builds.<sup>10</sup> It implies that: 1) a sovereign state is not allowed to make or apply its own laws on the territory of another state; 2) it has the duty not to intervene with force in the internal affairs of another state so as to affect the character of its political authority; and 3) all states, regardless of their differences, enjoy by virtue of their sovereignty equal rights and duties. Each sovereign state, hence, must respect sovereignty of all other states. Rules of coexistence (often referred to also as rules of sovereignty) then stipulate in detail how these general principles should be observed in practice and specify exceptions to them. Rules of cooperation, further, guide state behaviour beyond mere coexistence. It is crucial to stress that only rules of coexistence and cooperation can be regarded as *institutions* – sovereignty as a constitutive principle *precedes* international law and makes it as such possible.

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“decentralized,” “shifted,” “displaced,” “pooled,” or “surrendered.”

<sup>10</sup> The entire domestic legal structure builds of, course, on sovereignty as well. As Hans Kelsen (1945: 368-9) succinctly puts it: “it is the basic norm of the international legal order which is the ultimate reason of validity of the national legal orders, too.” Elsewhere he identifies the most crucial consequence of the fact that the modern state is an *internationally-created* entity, one that is, it is safe to say, entirely disregarded by contemporary IR theorists, including the new medievalists: “since the basic norms of the national legal orders are determined by a norm of international law, they are basic norms only in a *relative* (italics – M.F.) sense (Kelsen, 1966: 562).”

Misunderstanding state authority and sovereignty

FINAL AUTHORITY VS. TRANSFER OF AUTHORITY    What does the description of political authority in the contemporary international system so far imply? First, political authority cannot be equated with power over outcomes. While power over outcomes is in the hands of many, political authority is not. Only the state has *final* authority and that means that it legally sanctions and has the ultimate say over all of its domestic and international public acts. It means that when a state joins an international organization or signs an international treaty, it retains a final say over continuing these arrangements and can legally and legitimately terminate them, provided, naturally, that it satisfies the particular provisions of withdrawal from those arrangements. Though it may be very arduous to accomplish in practice, *state consent is never legally irreversible*. The overwhelming majority of international treaties and intergovernmental organizations have explicit provisions for states' denouncement, a fact usually disregarded by those who argue that state authority has been "lost" or "shifted" to various intergovernmental bodies. Middleton (1969: 153) aptly remarks that "to say that a state surrenders its sovereignty...by the mere fact of entering into an obligation that imposes a limitation on the exercise of its sovereign rights, is like saying that a man necessarily becomes the servant of another by contracting with him."

It is important to emphasize in this respect that the marker of sovereign statehood is not *exclusive* authority, as some authors mistakenly believe (Krasner, 1996), but *final* authority. Arguments that "at the end of the twentieth century we see the leaking away of sovereignty from the state both upwards, to supranational institutions, and downwards, to subnational ones (Lipschutz, 1992: 399)" are equally erroneous. Sub-state and international bodies such as the City of Vancouver, Lower Saxony, the IMF or the Dagestan Republic, of course, have political authority because they have the right to command, be obeyed, and, with the exception of the

IMF, even use physical coercion. However, what they do not have is final authority – their political authority is constituted by and wholly depends upon the sovereign state. If a group of European states decides to create a European Court of Human Rights and pledges to respect its rulings, then it can be said that these states have transferred the execution of their right to adjudicate on human rights elsewhere. They have not, however, “given up” their sovereignty because, by virtue of their final authority, they can terminate their obligations to comply with the Court’s rulings (i.e. withdraw from the treaty that set up the Court). This is exactly what Greece did under its military government and -- it cannot be stressed enough -- it did it *legally* and *legitimately*.

The same logic applies to the EU. It is not the case, as Robert Keohane (1995: 175) posits, that it is difficult to identify sovereign institution within it. *Everything the EU does has received prior consent of each of its member states*. Where the consent has not been given -- various states are not part to the upcoming monetary union, the Social Charter, the European Monetary System (EMS) or the Schengen Agreement on border controls -- it cannot be imposed by the EU Commission, the European Court of Justice or any other EU agency. The demarcation between the domestic and the international may indeed be difficult in the areas such as government subsidies or trade where all states agreed to create in addition to their domestic laws a unified set of EU rules. In cases of conflict between domestic and EU rules confusion may well ensue. But there little bafflement about, say, Denmark’s border control policies being a domestic matter as the country is not a party to the Schengen Agreement. It is also quite clear what Britain’s refusal to join the monetary union and its 1992 withdrawal from the EMS means: it remains in charge of its monetary policies. One of the basic rules of customary law that international agreements cannot bind non-participating third parties (*pacta tertiis nec prosunt nec nocent*) still applies within the EU.

Only the EU member states are sovereign and, as such, they retain the *right* to leave the EU. It may be objected that such an option does not in practice exist for the EU members. They are so entangled in the EU web, it can be said, that it is in reality impossible for them to withdraw. While these arguments are rectified, one has to make a sharp distinction between political and economic *costs* of leaving (these fluctuate over time) and political *authority* to leave (this remains permanent as long as the state stays sovereign). The two are very different items. While in practice leaving the EU can incur huge costs for a country, in law, nevertheless, this option always exists and is not questioned by legal scholars though the exact mechanism of withdrawal is disputed.<sup>11</sup> The British scholars Brian Hindley and Martin Howe have recently showed how their country can exercise its right to leave the EU. The British Parliament, they say (1996: 47), can terminate the enforceability of EU law in the British courts. There are, however, other EU countries where a simple parliamentary statute would presumably not suffice for making such a move and a popular referendum would be necessary.

SOVEREIGNTY AS POWER The most enduring mistake in the literature on international change, as indicated, is to equate sovereignty with state control, autonomy or power. This mistake perhaps more than any other divulges the unhistorical nature of contemporary IR theorizing. Sovereignty is in the mind of many a relative concept that fluctuates with states' capabilities and influence. Ruth Lapidoth (1992: 345) writes that "sovereignty in its classic connotation of total and indivisible state power has been eroded by modern technical and economic developments and by certain rules of modern constitutional and international law." Peter Willetts (1997: 293) argues that "the sovereignty of most governments is significantly reduced... [because] control over the currency and control over foreign trade have been substantially diminished." Thinking along similar lines, Susan Strange (1996: 13) talks about "allegedly" sovereign states; recognition

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<sup>11</sup> I thank Prof. Alan Siaroff for this information.

of sovereignty by state and non-state actors is today, according to her, nothing more than a "courteous pretense."

These kinds of interpretations are unfortunately *unintelligible*. If sovereignty indeed implies "comprehensive, supreme, unqualified, and exclusive power", as Scholte (1997: 26) insists, then it is very doubtful that there has ever existed an entity called sovereign state. For even the most powerful states have not historically had power to achieve everything they had set to achieve. The U.S. is today arguably the most powerful country on earth, yet it does not have power to control, for instance, the drug trade across its border. Despite proclamations of "war on drugs" by a succession of U.S. presidents, despite the large sums of money spent on policing the border with Mexico, despite the close cooperation with Mexico, Colombia and other countries, illicit drugs find their way to the U.S. territory and thousands of American citizens die every year as a consequence of using them. Is the U.S., however, less sovereign because its inability to control the drug trade? If yes, is the country more or is it less sovereign today than during the 1930s when it could not control its prohibition of liquor production and distribution? And how much control or power do states have to have to be considered sovereign anyway?

Even a quick look at history will tell us that states have never been able to control everything and everybody, or had power to act as their wished. Stephen Krasner (1996: 140) is right when he writes that "in some areas of the world, notably Central and Eastern Europe, there have never been any smaller Westphalian states, that is, entities that enjoyed full autonomy." But the truth is that *all* states have historically had their autonomy constrained -- by various international obligations, by domestic interest groups, by constitutional limitations, by being too poor, by being too corrupt, by being too incompetent, and so forth. Their power to achieve their goals has varied across time and space, often quite rapidly. Even Krasner in his earlier articles admitted that there had never been any golden age of state control (Krasner and Thomson, 1989:



189). His notion of “full autonomy” cannot, then, be but hopelessly undefinable (how do we know when a state does *not* have full autonomy?) and, hence, devoid of any usefulness for rigorous categorization in social science.<sup>12</sup> Studying the extraordinary deficiencies of most African states and yet the persistence of their sovereignty, Robert Jackson and Carl Rosberg (1989: 130) concluded that “it is impossible to have rational empirical qualifications for statehood.” From a domestic point of view, states are entities in *perpetual flux*, constantly reinventing and adapting themselves to new circumstances. Because of this reality, Jackson (1987: 519) insists that thinking about sovereignty is properly jurisprudential, not sociological or economic.

If Jackson’s argument is correct – and this study contends that it is – one cannot easily jump from describing certain historic features present in the system of sovereign states to presenting them as sovereignty *itself*<sup>13</sup> and, then, to asserting that once these features appear absent, sovereignty’s days are numbered. It may be the case that the nuclear revolution eliminated the possibility of wars among great powers and thus did away with a conspicuous feature of past international relations, but it cannot be concluded that this in any way leads to the “decay” of the Westphalian “temple” (Zacher, 1992). Sovereignty is merely a constitutive principle that assigns final political authority – it does not tell us anything about wars among great powers (or other states). By the same token, despite associations of contemporary statehood with taxation, border controls, national currency, individual rights, or provision of various social programs, sovereignty as such does not imply and thus cannot be confused with

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<sup>12</sup> Expressions such as “full autonomy” or “total state power” violate what philosophers of science Karl Popper and Imre Lakatos called “methodological falsificationism.” Both maintain that concepts in social science must be clearly defined so that they can be disputed and given up if proven false. A good definition has to indicate not only what the concept is, but also what it is *not* (Lakatos, 1970: 112).

<sup>13</sup> This line of reasoning is hardly new. Hugo Grotius (1925: 137) in his 1625 *The Law of War and Peace* inserted a section titled “Distinction between the right of sovereignty and the exercise of this right, with examples.” John Calhoun wrote in 1851 that “it is a gross error to confound the exercise of sovereign powers with

exclusive or effective economic control, physical impermeability of borders, efficient taxation (or even existence of taxation as such), viability of currency (or existence of currency as such), predominance of domestically-owned companies in exports statistics, civil rights, social welfare, democracy, domestic legitimacy, or domestic stability.

SOVEREIGNTY VS. RULES OF SOVEREIGNTY One cannot also conflate rules of sovereignty -- which regulate -- with sovereignty itself -- which constitutes. Unfortunately, many authors do precisely that and the results can be quite confounding. Samuel Barkin and Bruce Cronin (1994) and Stephen Krasner (1993, 1996) argue that because rules of sovereignty and thus "the scope of state authority" have changed, sovereignty itself is relative and changing concept. If, for instance, the Exclusive Economic Zone (EEZ) for the oceans violates the principle of territoriality -- some activities in the same geographic area (the exploitation of mineral and marine life) are subject to the authority of the littoral state but others (naval and commercial shipping) are not (Krasner, 1996: 148) -- it cannot be said then, these writers would claim, that sovereignty before the establishment of the EEZ means the same thing as sovereignty after its establishment. A similar case would be the uninhabitable territory of Antarctica over which no state has sovereignty but is rather jointly managed by several states, as stipulated by the provisions of the Antarctic Treaty.

This view is problematic because it makes impossible any clear conceptualization of international change. If sovereignty, as a fundamental constitutive principle of international society is subject to constant variation, then international change even at the most basic level is equally perpetual. However, what matters for our understanding of change at this level is not that some rules of sovereignty change over time<sup>14</sup>, but that *the fundamental constitutive principle*

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sovereignty itself, or the delegation of such powers with the surrender of them (quoted in Morgenthau, 1978: 330)."

<sup>14</sup> Several profound changes have, for example, occurred in the criteria which determine polities eligible for sovereign statehood. In the late 17<sup>th</sup> and 18<sup>th</sup> centuries only Christian monarchies could become sovereign; in the

*of sovereignty as final authority over a territorial domain remains fixed.* If particular states by virtue of their final authority give consent to create the EEZ for the oceans, then sovereignty is in no way violated or changed. If particular states by virtue of their final authority give approval to establish a regime against genocide and agree that if other states judge that state A committed genocide, then state A is a subject of military intervention (which is generally illegal), sovereignty is not breached. If particular states, including states A and B, by virtue of their final authority give consent to create rules of war and decide that once war by state A on state B is declared rules of sovereignty between state A and B are for the duration of war suspended, then, again, sovereignty is not violated.

### Change of the Westphalian system

The separation between sovereignty and rules of sovereignty is important because it helps us distinguish between different kinds of international change. While challenges to the constitutive principle warrant a discussion of potential transformation *of* the system, changes in the rules of sovereignty (or cooperation) point only towards change *within* the system, what Gilpin categorizes as systemic change. One can talk about change of the system only when there is a reasonable conviction that the structure of the distribution final authority may be changing. Alterations in political loyalty, communication technology, modes of production, or movements of goods, money and services should thus be examined with this in mind.

How do we know when a transformation of the system of sovereign states may be taking place? Taking my cue partially from Janice Thomson (1995: 229), I argue that at least one of the following must be *widely* present:

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19<sup>th</sup> century, then, European republics and non-Christian states such as the Ottoman Turkey, Japan or Siam as long as they accepted European "standards of civilization". In the 20<sup>th</sup> century the major state-creating concept has been self-determination. First applied in Central and Eastern Europe as part of the 1919 peace settlement, it culminated in the 1960s as the wave of decolonization swept through Africa, Asia and Oceania.

1. *The loss of state monopoly on legitimate coercion.* This would entail acknowledgment on the part of most states that non-sovereign entities may legitimately use force against sovereign states. The legitimate use of force by private armed groups across borders would critically mar what is the essence of public authority -- the right of enforcement.
2. *The loss of state monopoly on recognition of final authority.* Because the survival of the system of sovereign states depends on the preservation of the international society they form, a significant growth in the number of non-sovereign territorial entities accepted by this society (and physically *within* the boundaries of this society), yet politically *independent* of it, would spell weakening of the previous structure of distribution of final authority. It would mean that these entities are states not because of other states' recognition, but in *their own right* ("de facto states"), their recognition being dependent on non-sovereign entities. Whatever these entities may be, international law as the mechanism of regulating their relations with others would gradually cease to be relevant.
3. *The deterritorialization of state authority claims and their increasing legitimacy.* This would involve acceptance of either military interventions across state borders currently not backed by international law or attempts to apply laws of one country on the territory of other states.
4. *The legitimate extinction of sovereign states.* This would entail a forceful annexation of a state by another state or a group of states which is determinedly unopposed by the rest of states.

All of the above involve not only a gap between what could be accepted in the system and what is currently legal: the prevalence of any of them would suggest the end of the fundamental constitutive principle of sovereignty. To what extent these phenomena are present in the contemporary international system will be explored in Chapter 4. The next chapter will examine the structure of political authority in the medieval system and its eventual change.

### CHAPTER 3

#### Political authority in the Middle Ages

The medieval world emerged in the 5<sup>th</sup> century on the ruins of the Roman Empire. Around the year 400 John, the bishop of Constantinople, was still able to write: "Now these vast spaces the sun shines upon, from the Tigris to the Isles of Britain, the whole of Africa, Egypt and Palestine and whatever is subject to the Roman Empire lives in peace. You know the world is untroubled and of wars we hear only rumours (quoted in Koenigsberger, 1987: 9)." The Roman Empire was a vast conglomerate of disparate units in Europe, North Africa, Asia Minor and the Middle East which were nevertheless firmly centralized in one system of rule. Final authority was vested in the imperial government which was variably headed either by a single Caesar or by a college of Emperors. However, already in the latter part of the 4<sup>th</sup> century the order and unity provided by the centralized imperial rule began to crumble. This was especially visible in the European part where the deep penetration of the "barbarian" tribes disrupted the established patterns of imperial governance. Many of them were incorporated into the western half of the Empire and contributed to its gradual disintegration.

The final collapse of the Empire in the west came in 476 when the last western Emperor was dethroned by a barbarian general in charge of the Roman army. In law, the eastern Emperors were to reign over the whole Empire. In practice, though, with the exception of capturing several areas on the Italian peninsula and Sicily in the mid-6<sup>th</sup> century, they did not attempt to make good on their claims. This defensive attitude would essentially continue until the demise of Byzantium. Europe for two centuries had, as a result, "no coherent existence"

(Knutsen, 1997: 13). The continent consisted of a myriad of barbarian enclaves.<sup>15</sup> The only remaining centralist structure was that of the Roman Church.

Headed by the pope, the Church continued to acknowledge the eastern Emperor as the legitimate temporal ruler of the whole Roman Empire, even though in reality it did not exist anymore. The Church sustained this course despite the fact that its clout was rapidly increasing by intense proselytization in barbarian lands and, after Constantinople's failure to prevent the invasion of the Italian peninsula by heathen Lombards and defend the Papacy, by even assuming the temporal governance of the city of Rome and its surroundings. In the early 8<sup>th</sup> century, however, the position of the Church towards the Empire began to change dramatically. While the popes recognized the Emperors as supreme secular rulers, they insisted on their supreme role in matters of faith. When Emperor Leo III prohibited in 726 the display of religious icons, he directly challenged the pope's authority in ecclesiastical affairs. Pope Gregory II retaliated by blocking imperial revenues in Italy. Leo retaliated against this retaliation by imprisoning the papal legate and by removing bishoprics in Byzantine Italy from papal control and placing them under the patriarch of Constantinople (Koenigsberger, 1987: 121).

The iconoclast controversy gave a taste of medieval conflicts. It involved competing claims of the right to rule and be obeyed. The Papacy would consistently claim exclusive spiritual authority which, given the generally accepted notion of superiority of spiritual over temporal affairs, meant the ultimate political authority. This authority in papal rendition<sup>16</sup> included the right to decide first which matters are public and thus subject to political rule;

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<sup>15</sup> In the 5<sup>th</sup> century, to give a few examples, Britain fell to the Angles and Saxons, the Iberian peninsula to the Visigoths, and Gaul to the Franks.

<sup>16</sup> There were several bases on which the Papacy claimed the ultimate authority throughout the Middle Ages. One of them was the so-called Donation of Constantine. Though the document proved later to be a complete forgery, popes starting at least in the 8<sup>th</sup> were sincerely convinced that Roman Emperor Constantine, grateful at being healed from leprosy by Pope Sylvester, conferred on him his imperial crown. The magnanimous Sylvester, in turn, was believed to place the crown on Constantine's head (Cantor, 1994: 177). The Donation was reinforced

second, which of these matters are spiritual and which temporal in nature; and, third, the right to have the ultimate say over temporal affairs even if others had normally jurisdiction over them. The papacy was, in other words, to be the final court of appeal and the arbiter of last resort within Christendom. Consequently, the political authority of others was to be limited. As Walter Ullmann (1975: 141) notes.

The basic assumption behind every [papal] decretal was papal primacy in the shape of universal monarchic government to be exercised over society which was the Church as the body of clergy and laity alike. In his function as governor the Pope did not belong to the Church, but stood outside and above it.

The Curia's breach with Constantinople and the subsequent refusal of the Emperor to assist Rome in 753 against the renewed threat of Lombard attack led to one of the most momentous events in the Middle Ages. The Holy See appealed for protection to the Christian kingdom of the Franks, and its pope-coronated leader Pepin, agreed to invade the peninsula and give the conquered Lombard territory in central Italy to the Pope. Pepin fulfilled his promises and was able to forge in the process a strong and lasting alliance with Rome. The popes became convinced that their claims of authority would be better served by an alliance with the powerful and ever-expanding Franks rather than with recalcitrant Byzantium. Much to the chagrin of the Emperor in Constantinople, Pope Leo III crowned Pepin's son Charlemagne in 800 as an Emperor. This move represented nothing less than termination of papal recognition of the eastern Emperors as supreme temporal rulers. Also on the basis of this precedent the popes later claimed the right to confirm and dismiss Emperors and argue that the ultimate political authority of the Holy See over Christendom was recognized by the Emperor in 800.

Charlemagne's successful military campaigns greatly expanded his rule. By the time of his death in 814 the Empire covered in fact nearly all of the continent and gave Europe a

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and at the end partly replaced by another justification: the direct primogeniture of the see of St. Peter who was entrusted by Christ with the all-embracing governance of Christians (Ullmann, 1966: 89-91).

modicum of political unity. His reign also solidified the feudal system characterized by the fundamental constitutive principle of *vassalage*. In essence, vassalage entailed a specification of jurisdiction and the scope of political authority within it between superior and subordinate party. It was made legally binding by various specialized agreements (oaths of fealty -- commendations, charters, privileges, treaties, bulls) which outlined respective rights and obligations -- the division of labour. Vassals ordinarily received landed fiefs in exchange for army service in time of need or were pledged physical protection in exchange for regular payment of impost. The fief (also referred to as *beneficium*), however, remained a public land because its holding was conditional on fulfilling social duties and could be taken away by a lord in case these duties were not fulfilled (Cantor, 1994: 199, 201). Other noteworthy features of vassalage were that it covered all members of Western Christendom -- from the Emperor and kings to peasants -- and that in great many cases their vassal obligations were manifold and vassals of somebody would be at the same time lords of somebody else. The latter condition is what is referred to as legal heteronomy.

However, the effectiveness of enforcement mechanisms in this vertical system of rule was short-lived and disintegrated not long after Charlemagne's passing. The Emperor's descendants fought each other in a series of devastating wars and the vacuum on the top severely weakened vassalage as the principle of political and social organization. Fiefholders came in many cases to look upon the public territories in their charge as private property. As the medieval historian Brian Tierney (1964: 24) comments, after the decline of Carolingian empire

virtually all the tasks that we would consider the responsibility of public authority...were discharged...by local lords who regarded such functions as private, profit-making prerequisites attached to their property rights over land...A petty lord regarded the village church and its lands as a part of his estates, the priest as an estate servant like one of his stewards to be appointed at will. A greater noble, greedy for the vast lands of some local abbey, would set himself up as its 'protector' and assume the right to appoint its abbot. The complex of estates belonging to the abbey then became just one more fief rendering services to the lord and subject to his rule.



Put differently, activities such as levying taxes, controlling agricultural production, policing, and administering justice in local courts would not be conducted in accordance with the terms of vassalage agreement(s), but at a whim of the fiefholder.

Legitimacy thus reflected legality for only a brief historical moment and the constriction between the two failed to persist. The Middle Ages were filled with recurrent armed contests over what this or that actor had *right* to do in a particular domain. This state of affairs came to be considered normal and was miscellaneously legitimized -- typically as God's punishment for human sins. Conflicts over different interpretations of political authority led to the blurring of the distinction between the inside and the outside of a domain of rule, between sacral and temporal affairs, and between private and public acts or actors. If "public territories formed a continuum with private estates," it was not as Ruggie (1986: 142-3) seems to imply because of some inherently confusing character of legal heteronomy<sup>17</sup>, but because the pervasive violation of law and the simultaneous absence of law enforcement made eventually the separation between the public and the private hopeless. The effect cannot be taken to be the cause. Equally misleading, therefore, is the charge that "decentralized political authority necessitated ad hoc bargains and reliance on self-help by social actors (Spruyt, 1994: 539)." First, it was the conscious resolution to act *independently* of the medieval legal framework of vassalage which led to these consequences, not decentralized political authority *per se*. Second, this very conduct made the medieval system seem much more decentralized than it in law really was.

The vassalage system nevertheless persisted for the whole period of the Middle Ages. This was primarily because a sufficient number of actors continued to acknowledge until the 16<sup>th</sup> century their subjection to the Papacy (Ullmann, 1966: 88, 139; Armstrong, 1993: 23). But even

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<sup>17</sup> After all, multiple legal obligations exist today as well. Within Canada one must simultaneously obey city or county by-laws, provincial law and federal law and occasionally these duties mutually contradict and cause confusion. However, if they do, formal mechanisms -- courts that decide which law has precedence -- are in place to resolve it.

with respect to the Papacy conflicts occurred not only over specific terms of this subordination, but also over the subordination *as such*. In other lord-vassal relationships, denials of subordination were a regular occurrence. That is why Waltz and Fischer think of the Middle Ages as “anarchy”: sociological anarchy was the result of frequent rejection of vassalage ties. Conduct that contravened the principle of vassalage was indeed ubiquitous and its preponderance made legal rules too often impotent. This is true of even the smallest of units: though they were not separate in law from Christendom’s central institutions, they routinely acted as if they were. While a Heidelberg professor’s lament in 1408 that “every nobleman, however modest his standing, is a king in his own territory; every city exercises royal power within its own walls (quoted in Offler, 1965: 220)” might have been exaggerated, it was not without a very strong foundation and was not unusual. Those who wanted to act independently and could protect themselves against their lords or other challengers indeed ruled their domains. *The chief difference between the medieval and modern systems lies in the conduct in relation to their respective legal orders and especially with respect to their fundamental constitutive principles.*

Exceptions to the pattern of medieval conduct presented above were strong personalities who in their lifetime would be able to bridge, though never close, the gap between legality and legitimacy. The Frankish Kings and Emperors Otto I (936-73) and his son and grandson restored the position of the Papacy in Western Christendom after it became with the demise of the Carolingian empire “a pawn in the power politics of the great Roman families (Koenigsberger, 1987: 124).” They all traveled to Rome to be properly installed by the pope. Otto III also placed Church organizations in the newly established kingdoms of Hungary, Poland and Bohemia, which themselves recognized the Emperor as supreme temporal ruler (Otto III crowned the first king of Hungary, Stephen), directly under the pope. As for the relationship with their vassals, these Emperors were able to maintain the loyalty of the magnates.

However, the characteristic feature of these exceptions was their temporary, transitory nature. They rarely outlived the people who made them happen. When Henry III journeyed to Rome to be crowned as Emperor in 1046 by the strengthened and more respected pope, he found there to his unpleasant surprise three rival candidates each claiming the Holy See. Although the election of the Pope was an exclusive right of the Roman nobility, Henry decided that it was necessary he interfered. He dismissed all three claimants and appointed a candidate of his choice. The Romans, resentful of imperial meddling, however, evidently poisoned Henry's first and second candidate (Tierny, 1964: 27) and only the third candidate, his cousin Leo IX, was able to survive more than a few weeks.

Under Leo a reform movement to strengthen the effectiveness of papal authority got under way. One of its key goals was the return to executing the papal right to control ecclesiastical offices, many of which in the latter half of the 9<sup>th</sup> century<sup>18</sup> got under the *de facto* hold of laity feudal lords. However, if pursued without coordination with the lords themselves, this stance invited discord, as lords endowed bishops, abbots and priests with property and in return expected both their loyalty and the right to appoint them. As it turned out, after the deaths of the closely-cooperating cousins Leo and Henry, the most serious conflict occurred right at the top of medieval hierarchy. The new Pope, Gregory VII, strongly insisted that, as part of his authority in divine matters, he and not lay rulers had the right to select bishops. Rome, he argued, never gave up this right in the 9<sup>th</sup> century. But the new Emperor, Henry IV claimed that as part of his monarchical authority he had the right to appoint bishops of his own choice. Bishops were, he maintained, his vassals who received vast fiefs as temporal lords in return for

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<sup>18</sup> With the chaos of post-Carolingian period, churchmen turned to lay lords for protection. In return and despite bitter protests of the Papacy under Nicholas II (858-67), lords assumed the control of ecclesiastical offices. However, later in the century the office of the pope itself became extremely weak. The Roman aristocracy elected popes based not on their commitment to the Church, but on their views regarding city politics. As a result, they were rarely interested in developments beyond Rome. When Pope John VIII (872-82) begged to differ by coronating Charles the Bald and then Charles the Fat, he was assassinated (Ganshof, 1970: 27-8).

crucial political support of the Emperor – serving as a counterbalance against the Emperor's unreliable and potentially restive secular vassals, the magnates (Koenigsberger, 1987: 165). Their confrontation showed that if strong personalities were at times solutions to the problems over political authority, at other times they were their cause.

When Gregory appointed his candidate for the bishopry of Milan in 1076, Henry summoned all bishops in the Frankish kingdom (whom he himself appointed) and declared Gregory deposed. He justified this step by announcing that he was the licit *dominus mundi* (the overlord of the world) and that his authority came directly and exclusively from God. Gregory replied to this move by declaring that the Emperor had no right to depose the Popes and himself deposed Henry and excommunicated him from the Church. Henry's plan backfired as he lost support of his bishops and nobles who declared him deposed if he did not obtain within a year papal absolution. When in January, 1077 he was granted Gregory's pardon the imperial diet split in two factions which instantly engaged in war: some of Henry's former backers renewed their support and others, angry at Gregory for betraying them, elected Rudolph of Swabia to the throne. Gregory was once again faced with a decision – this time whom to choose among the two contestants. After three years of deliberation he picked Rudolph and deposed and excommunicated Henry once again. Unfortunately for Gregory, Henry managed to defeat and kill Rudolph. As four years earlier, he convened a council of bishops and the council deposed Gregory once again. In addition, this time the council also elected a new Pope, Clement III. Henry then marched on Rome, expelled Gregory and installed his own nominee. This, however, did not resolve the conflict: Henry's son, Henry V, fought Pope Paschal II over the very same issues, at one point even kidnapping him from Rome.

Far from being an isolated incident, the medieval period abounded in Investiture Controversy-like contests. Similar patterns of conflict repeat themselves numerous times

throughout the Middle Ages. Shortly after Gregory VII was driven out from Rome, a conflict resembling the one between the Emperor and the Pope erupted in England. Anselm, the archbishop of Canterbury, quarreled with kings William Rufus and Henry I over the right of investiture and the duty of homage to the royals. Anselm asserted on papal behalf that only the pope had the right of naming bishops and that these owed no tribute to the King; William and Henry claimed the opposite. The conflict was solved by exiling Anselm. Seven decades later Thomas Becket, another archbishop of Canterbury, was not so lucky. When he disputed King Henry II's right to punish clergymen convicted of crimes in ecclesiastical courts and King's ruling that appeals from these courts to Rome were forbidden, he was murdered.

At the same time the clash between Thomas and Henry was taking place in England, a new conflict between the Pope and the Emperor was unraveling on the continent. A new and powerful Emperor Frederick I Barbarossa refused in 1159 to acknowledge the pontifical election of vigorous papal-rights defender Alexander III and instead backed his friend Cardinal Octavian who proclaimed himself to be Pope Victor IV. Alexander excommunicated him and the struggle between the two dominated European political scene for the next two decades. Alexander was recognized by several rulers, but nowhere did he get as much support as from the cities of northern Italy. Those resented what they regarded as imperial infringement on their rights. Many of them were established by the imperial charter as corporate settlements: its inhabitants were to be protected by the Emperor in exchange for regular payment of taxes from their trade and other economic activities. However, in practice the Empire often did not protect the Italian cities and they did not pay the taxes. They regarded themselves as independent. It came as a shock to them, then, that Frederick I suddenly threatened to use of force if they refused to pay the amounts he requested. When in 1162 his troops raided Milan -- the city he was supposed to protect -- it sent shockwaves throughout communes of northern Italy.

The cities established an anti-imperial alliance called the Lombard League and strenuously fought Frederick to preserve their independence. They justified their resistance by pre-Christian Roman law of absolute property, the antithesis of the vassalage principle. Notwithstanding this fact, Alexander blessed their venture. The decisive victory of the League at the Battle of Legnano in 1176 forced Frederick to give up the right to appoint city officials or collect taxes, although in exchange the cities recognized the Empire as their formal suzerain. Frederick was also compelled to recognize Alexander as pope and end his pretensions on behalf of Cardinal Octavian.<sup>19</sup>

One can speculate endlessly about the motivations of individual players in all of these disputes. Some of them are still matter of intense controversy among historians and increasingly also among political scientists. Was, say, Henry's dramatic loss of support in the Investiture Contest after the first of Gregory VII's depositions primarily a sign of Gregory's moral authority over Henry's supporters, or an expedient fig leaf for the selfish interests of power-hungry nobles? This study does not need to provide these answers – precise motives are not its concern. For its purposes it suffices to say that, whatever these motives might have been, the concrete actions of medieval actors testify to the extremely fragile nature of political authority in the Middle Ages. Who had right to govern and in what domain was subject to fierce and largely unregulated competition which was almost always at the end settled by violence.

An objection may be raised at this point. It can be argued that in practice it frequently is extremely hard to judge whether a particular behaviour is or is not legal and that, therefore, some or all contentions presented above may be mere subjective impressions and not statements of

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<sup>19</sup> However, only two generations later the same conflicts flared up again. Barbarossa's equally formidable grandson, Frederick II, attacked once again the cities of northern Italy to assert what he deemed to be violated imperial rights and the cities would once again unite in an alliance to resist him. Two successive popes, Gregory IX and Innocent IV, claiming that the Empire is a papal *beneficium*, deposed and excommunicated Frederick. His aspiration, against papal wishes, was to unite Italy under the imperial banner. The Holy See again found itself

facts. Often, actions are both justified and resisted by reference to the same corpus of law. In domestic systems there are courts that formally determine questions of legality, but neither medieval nor modern systems of rule have had as such a system-wide compulsory judicial body that would decide on these questions. As a result, it may be disputed, one cannot in the absence of a judge rely heavily on judgments of legality of this or that act and even less confidence can be placed on theoretical conclusions which are grounded in those judgments.

I acknowledge that it is often extremely difficult to determine whether a certain act in the medieval era or in the system of sovereign states is in accordance or contravenes the law. However, many of the violations with which this thesis is preoccupied -- those which have *transformational* potential -- can be with a high degree of certainty called just that. This is because they are usually *justified* by explicitly *different* precepts from those in practice and/or by couching them in the language that has very little to do with the existing law. If the "free" cities of northern Italy justify their armed resistance to the Emperor as they did by reference to pre-Christian Roman law of absolute and unconditional property rights, then we know that they were operating *outside* of the medieval framework of conditional property rights. If the Emperors began to insist in the 11<sup>th</sup> century that they and not the Papacy are the rightful overlords of the world with nobody but God above them, then we know that they departed from more than two hundred year-old doctrine that the ultimate authority resides with the Pontiff.

The vexatious problem of political authority became even more complicated in the 13<sup>th</sup> and 14<sup>th</sup> centuries as kings embarked upon pressing forcefully their own "rights" against the Empire and the Pontiff. Anti-imperial mood in Rome induced Pope Innocent III in 1202 to recognize in his decretal *Per Venerabilem* supreme *de facto* temporal authority (though not *de iure* independence from either the Empire or the Holy See) of the French monarch (Ullmann,

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endorsing anti-imperial forces in Italy. At the end, the offensive of the Empire stopped only after Frederick II had

1949: 1-2). This was also reaffirmed by Innocent IV's *Decretales*, issued in 1250 at the height of struggle against Emperor Frederick II. However, that these pronouncements did not solve everything became evident fifty years later when Pope Boniface VIII, now supported by Emperor Albert I who recognized the dependence of his crown on the Curia, disputed the right of Philip IV both to tax the clergy and to try it in the royal courts. As with the Investiture Contest and frictions between Anselm and Becket and the English monarchs the question arose: were these competencies temporal in nature or did they encroach upon sacral authority of the Papacy? The two sides, of course, claimed very different things. The matter was solved at the end by now familiar method, violence. In 1302 Philip, contending that since there had been kings before popes, popes could not be possibly superior to kings (Nossal, 1998: 202), sent his soldiers to arrest Boniface. After he had been subjected to rough treatment in the hands of the French troops, the elderly Pontiff died.

This episode appeared to be entirely forgotten only a decade later as the Curia became embroiled in yet another vicious fight with the Empire and had to engage in active solicitation of support among European monarchs. Similar to his predecessors Frederick I and II, Emperor Henry VII had territorial ambitions in Italy which ran contrary to Rome's wishes. Henry claimed direct temporal authority in the kingdom of Naples, a papal fief, and to bolster this pretension he passed in 1312 a law which proclaimed that "every soul was subject to the emperor without any exception (quoted in Ullmann, 1949: 25)." King Robert of Naples refused to hand over the kingdom and Henry in return stripped him of his royal title. Robert was, however, helped mightily by Pope Clement V. In his decree *Pastoralis Cura* (1313) he declared Henry's tirades against Robert null and void and formally repudiated the political and legal supremacy of the Holy Roman Empire over kingdoms. The Empire and kingdoms were made political and legal

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unexpectedly died and no successor of comparable skill and ambition could be found.



equals: kings were declared emperors in their realms (*rex est imperator in regno suo*).<sup>20</sup> With kings becoming *de iure* independent of the Emperor the imperial authority got, therefore, legally confined to a certain territory only. As Walter Ullmann (1949: 26) in his article devoted to this dispute comments, "the Pope found himself, compelled by circumstances, driven into ideological company of precisely those who only a few years before assailed his predecessor, Boniface VIII, in the most vituperative manner."

The resolute rebuttal from the Curia and subsequent military victory of Robert in effect buried imperial pretensions to direct rule beyond Germany and parts of northern Italy. Still, the decline of the Empire did not immediately or inevitably signal the rise of kingdoms. As Joseph Strayer (1970: 58-9) writes, kings even in advanced England and France exercised temporal authority over only small sections of their kingdoms: "the great kingdoms of the West might have solid cores, but on their fringes were areas which might or might not be incorporated... It was not clear who was independent and who was not, and it was difficult to draw definite boundaries in a Europe which had known only overlapping spheres of influence and fluctuating frontier zones." The example Strayer (1970: 83) provides is particularly telling:

A King of France might send letters on the same day to the count of Flanders, who was definitely his vassal but a very independent and unruly one, to the count of Luxembourg, who was a prince of the Empire but who held a money fief (a regular, annual pension) of the King of France, and to the King of Sicily, who was certainly ruler of a sovereign state (i.e. *de iure* independent from the Empire – MF) but was also a prince of the French royal house.

The next three centuries were characterized by the struggle of kings (and Emperors) to submit their "unruly" vassals -- princes, dukes, barons, counts, knights -- to their authority. However, to label these struggles 'civil wars' would be entirely inappropriate as they were rarely limited exclusively to the royal realm. External military intervention was endemic as many

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<sup>20</sup> As early as 1244 the French king forbade his liegemen to hold land within the Empire and banned the swearing of allegiance to both King and Emperor (Anderson, 1996: 21). In 1416 Emperor Sigismund, attempting to visit England, was refused admission at Dover until he had formally declared that he had no intention of infringing upon the king's authority in the domain of England (Wight, 1977: 27).

vassals relied on the assistance of outsiders in the confrontation with their kings. Once again it must be emphasized, though, that this was not a result of some natural bafflement over the delineation of medieval jurisdictions. As Friedrich Kratochwil (1986: 33) writes in his study of boundaries, "although the limits of the realm were quite well known, there was a tendency to obfuscate the boundaries of the kingdom. Nobles made war on their own and had pretensions on domains in other realms; interventions and counter-interventions were the order of the day, preventing the kingdoms from acting like unitary states." The Hundred Years War (1337-1453) between the French and English monarchs was such a protracted conflict because various dukes within the French kingdom repeatedly opted for alliance with England in their endeavour to shake off their vassal ties to the French crown (Brittany, for instance, declared in 1341 that it was a kingdom separate from France). Even though the English had eventually been pushed out of the continent, the fight between the King and the alliance of French nobility led by the Duke of Burgundy called the League of the Public Weal continued for decades. It was of considerable help to the League that the Duke of Burgundy managed to become through marriage the ruler of the Netherlands and thus substantially expand the resources available for the struggle.

If the 14<sup>th</sup> and 15<sup>th</sup> centuries saw fierce "internationalized" contests over political authority, their intensity was still moderate in comparison with what came in the 16<sup>th</sup> century with the rise of the Reformation. The kingdom of Bohemia and the first reform movement with widespread following that sprung up there provided already in the early 1400s a picture of what was to come later. Led by John Hus, the rector of Prague's Charles University, the reformers argued vigorously against the considerable intrusion of the Church in temporal affairs of Bohemia. The Church held large fiefs all around the country and the Hussites argued that the Church's wealth corrupted its sacral responsibilities. The problem was that leaders of the Bohemian Church were for the most part vassals of the King of Bohemia and he did not want to

see their role diminished. When King Sigismund, whose dynasty, the Luxembourgs, at the time held also the imperial throne, saw that the Hussites were receiving substantial support among Czech cities and the lower nobility, he decided to uproot the movement. He found an ally in the Papacy which was still reeling from the almost three-decade old Great Schism, in which at first two, then three candidates claimed the Holy See.

Sigismund invited Hus to the general Church council at Constance (1415), where he expected Hus would recant his views. When Hus refused, he was, despite Sigismund's imperial guarantee of safe passage, burnt at stake as heretic. His death radicalized Bohemia and set off a reaction that Sigismund and the Church hardly expected. Many Czech communes, witnessing the influx of the Hussites, repudiated the authority of the King and the Church and instead averred the right to live according to Hus' teachings. After Sigismund was unable to defeat the cities with Bohemian resources, he involved the Papacy and the whole Empire. Even with this overwhelming superiority in power, it took five pope-blessed crusades and close to twenty years of savage fighting finally to defeat the Hussite coalition in 1434.

#### The medieval-to-modern transformation

With the spread of Lutheranism and Calvinism in the 16<sup>th</sup> century similar "declarations of independence" and then resulting conflicts became the order of the day all over Europe. As the medieval hierarchy ultimately stood on the subjection of all to the pope in the *Respublica Christiana*, it is extremely significant that they were styled as a rebuff of the Papacy's final authority. Up until the 16<sup>th</sup> only a very small number of Emperors and kings had argued that they were not subordinate to the Curia. For hundreds of years there was, despite periodic quarrels of Emperors, kings and other with Rome, a widely accepted belief that the Papacy held the overall primacy of authority in Western Christendom. Now, however, contrary claims became rampant.

Interestingly, the earliest breaks from Rome were committed by Catholics, not Protestants. In 1525 the Grand Master of Teutonic knights (who only later adopted the Lutheran faith) made himself a Duke of Prussia and severed his links with Rome. While he still affirmed his vassal status vis-à-vis the king of Poland, no such acknowledgment came from the Swedish potentate who repeated the same move (still as a Catholic) two years later. Perhaps the most famous is the case of Henry VIII of England who in 1534 without any intention to change his religion proclaimed England to be *de iure* independent from the Holy See. Never before were the foundations of the medieval order threatened more gravely: when the monarchs of Sweden and England declared that there was no earthly lord possessing the right to command them, they were the first to discard wholly the fundamental constitutive principle of vassalage as inapplicable to them. They were from now intent to be vassals of no one.

One after another the European monarchies and imperial princedoms split off from the Papacy as under the impact of spreading Protestantism they came to regard Rome's claims of final authority as *illegitimate*. In addition, in many cases Protestant subjects refused to be governed by Catholic rulers and Catholic subjects withdrew obedience from Protestant rulers. The result was the bloodiest period of the Middle Ages in which it was even more difficult than in the past to distinguish between "domestic" and "international" wars. The former were innately predisposed to develop into the latter. Eight wars between French Catholics and Huguenots within 36 years (1562-1598) witnessed armed intervention of Spain, Piedmont-Savoy, the imperial Protestant League, the Papacy and England. Even more pronounced was the outside intervention in the Dutch revolt against Catholic Spain which lasted 80 years. As it became, for example, clear that England provided considerable assistance to the Calvinist movement for independence, Philip II of Spain decided in 1588 to dispatch his Armada and conquer England itself.

The situation was made even more complicated by the fact that often the lines of conflict did not run along simple Catholic-Protestant divide. As the German historian H. Koenigsberger (1987b: 68) writes about the Schmalkadic war (1530-55) between Emperor and Spanish King Charles V and the coalition of German Protestant principalities and cities:

The opposing sides...were never neatly divided on purely religious lines. Charles V's most effective ally in Germany was the Protestant Duke Maurice of Saxony, jealous of the electoral dignity of his cousin. He was duly rewarded with his cousin's title and half his lands only to turn on the Emperor a few years later. Even earlier, in mid-war, Charles' other ally, the Pope, had withdrawn his troops from Germany and soon papal and imperial troops faced each other in Italy because Emperor and Pope quarreled over Pope's policy of acquiring the small duchies of Parma and Piacenza for his family, the Farnese.

The term "Wars of Religion" to describe 16<sup>th</sup>-century bloodshed is thus not entirely precise. Recurrent conflicts between co-religionists were certainly common. The Protestant kingdoms of Sweden and Denmark were fierce rivals fighting several wars in the second half of the 16<sup>th</sup> century. The largest and most protracted military rivalry of the 16<sup>th</sup> and 17<sup>th</sup> centuries was that of Catholic Spain (and more generally the Catholic Habsburgs) and Catholic France and that, for instance, in 1535 Francis I of France did not find it disconcerting to conclude an alliance with the "infidel" Ottomans against Charles V. It appears that the issue of domination of the Habsburg family was at least as important as the problem of Reformation.

There can hardly be doubt that war in the 16<sup>th</sup> century came to be waged on a larger scale than ever before (Hale, 1971: 5). This was partly due, as Gilpin notes, to several military innovations. The invention of gunpowder made certainly war more destructive, especially in the hands of mercenary armies. Traditionally employed by cash-strapped rulers who could not afford standing armies, they frequently got out of their control when not paid or fed properly and waged private wars of their own. In 1527 imperial mercenaries ignored the orders of Charles V and brutally sacked Rome, the Empire's ally. If the alliances were often confusing and highly fluid, it was also thanks to their practices.

The medieval era was not devoid of laws of war and these included dicta on who can rightfully wage war. Thomas Aquinas in the 13<sup>th</sup> century, for instance, insisted that only public authorities could and several kings in their centralizing and unifying efforts forbade private armies within their realms so as to prevent them from turning on their kings (the French King issued such decree in 1439 as he was getting the upper hand in the Hundred Years War). But their ordinances did little to solve the problem either in own kingdoms or elsewhere: these armies abounded and often acted as public agents. In 1311 the Duke of Athens hired a force of 6,500 men, but they overthrew him and established their own “duchy of mercenaries” which lasted for 63 years (Thomson, 1994: 28). On the Italian peninsula, according to Anthony Mockler, “by the end of the 15<sup>th</sup> century...condottieri (military contractors – M.F.) had become dukes, and dukes had become condottieri (quoted in Thomson, 1994: 27).”

The medieval war consequently resembled an arena in which anything went and this became nakedly evident when the two distinct visions of political order clashed in the 16<sup>th</sup> century (Parker, 1994: 47). Towns and villages were laid waste, civilians butchered, prisoners of war executed. Hugo Grotius (1925: 20) summarized the state of affairs at the end of the 16<sup>th</sup> century and the first decades of the 17<sup>th</sup> century in the following way:

Throughout the Christian world, I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.

The Thirty Years War (1618-48) represented the culmination of medieval violence and the climax of struggle involving competing claims of final political authority. What started as “civil” war in Bohemia – dethroning of the detested Habsburg King, Ferdinand II (from 1619 also the Holy Roman Emperor), at the hands of the predominantly Protestant Czech diet and his replacement by the head of the German Protestant Union, Prince Frederick of Pfalz – once again

directly involved those beyond Bohemian frontiers. This time, however, it came to engulf the whole continent (and even parts of South America and southeast Asia). As for the most part of the 16<sup>th</sup> century, the coalition of Protestant principalities and France were pitted against the imperial Habsburgs. As in the 16<sup>th</sup> century, the religious cleavages alone could not explain the conflict: Spain actively aided the Huguenots in yet another of their battles against the French king, while the successive chief French policymakers, Catholic Cardinals Richelieu and Mazarin, elaborated in great detail why France had to join the Protestant as opposed to the Catholic side. In addition, Sweden, the most powerful of Protestant monarchies, conspicuously left out the religious question as one of its reason for joining the war. Instead, it was, in the explanation of the King of Sweden, the Habsburg drive for “universal monarchy” that warranted the Swedish entry (Holsti, 1991: 27).<sup>21</sup> Again it is useful to remind ourselves of the metamorphosis in political thinking: the realization of Christian universal monarchy was the reason for the hierarchical principle of vassalage in the first place. In the eyes of Sweden, whose monarch entered the war “asserting the equality of all crowned heads (Wight, 1977: 135)”, but also France and other, mostly Protestant, principalities, the Habsburgs in association with the Pope wanted to impose on Europe a Charlemagne-type empire and this was unacceptable.

The fact that the anti-imperial alliance eventually prevailed signaled a dramatic move in the direction of systems transformation. The Peace of Westphalia, as are the 1648 Treaties of Münster and Osnabrück collectively known, dismantled – with the exception of the Empire -- all vestiges of legal hierarchy at the “top”. The declarations by Sweden or England 120 years previously which asserted both countries’ final authority might have still been at the time isolated occurrences, but now the principle of sovereignty was accepted as a prevalent one. It was from now on understood that Denmark, Spain, Portugal, or the newly recognized United Dutch

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<sup>21</sup> France declared war on Spain partly for the same reason: Spain was said to seek a “universal empire” (Holsti,

Provinces and Switzerland were constitutionally independent states. They could not be obligated without their consent. At the same time, the Peace of Westphalia refused to recognize non-territorial entities such as the Hanseatic city league (Spruyt, 1994: 546).

While member principalities of the Empire nominally did not gain constitutional independence, they came very close to it. Article 63 of the Treaty of Osnabrück is worth quoting at length as it postulates that:

[All and every electors, princes and estates of the Roman Empire] shall enjoy without contradiction the right of suffrage in all deliberations concerning the affairs of the Empire, especially when the business in hand touches the making or interpreting of laws, the declaring of war, the levying of taxes, raising or maintenance of troops, the erection on imperial behalf of new fortresses or the garrisoning of old in the territories of the states, also the conclusion of peace or alliances, or similar matters. In these and like concerns nothing is in future to be done or admitted except by the *common free choice and consent of all* (italics – M.F.) the imperial states. But particularly the individual states shall be for ever at liberty to enjoy the right of making alliances with each other and with other parties for their own support and security; always provided that such alliances shall not be directed against the Emperor or Empire, nor against public peace of the Empire... (quoted in Elton, 1968: 248).

The constituent states of the Empire were thus for all practical purposes equipped with the authority of the sovereign state and would in the future conduct themselves accordingly. They would often make war and alliances with states outside the Empire and these alliance did not require the imperial consent. They also evolved into full participants in the resident diplomatic relations of the day (Wight, 1977: 158). On the other hand, the settlement stripped the Papacy of its 1,200 year-old possession of final authority. Pope Innocent X's tart clamour that the covenants were "null, void, invalid, unjust, damnable, reprobate, inane, empty of meaning and effect for all time (quoted in Philpott, 1995: 364)" did nothing to reverse the divestiture of papal right to govern beyond the territory of the Papal states.

By legitimizing the principle of mutually recognized and territorially separate final authority, the signatories of Westphalia collectively cut the Bishop of Rome loose. The



entrenchment of sovereignty was as much “Catholic science” as it was Protestant. The Curia, of course, did not lose power or influence over outcomes, but it most definitely lost political authority over Western Christendom. As late as 1570 and 1585 popes proclaimed Elizabeth I of England and Henry Navarre of France respectively deposed as heretics and therefore illegitimate rulers (to no effect), but from now on Rome could no longer claim the right to prescribe one correct way of governing. Such zeal was rationalized as a recipe for prolonging an already endless war – and instead the settlement allowed different political communities to organize their internal affairs as they wished. This right to design freely the shape of their political life was to be limited only by their international legal obligations.

According to Hedley Bull (1990: 75-6), the significance of Westphalia lies essentially in the fact that it marked the emergence of international society. When it became palpably evident that no vertical arrangement of political authority in a Europe of diverse political communities was feasible, the alternative lay in their horizontal ordering with clear principles and rules of mutual engagement and coexistence, many of which were agreed upon in 1648 or shortly thereafter, laying the foundations of international law. Among them, *pacta sunt servanda* was perhaps the most important as it made apparent what medieval law of vassalage for the most part failed to make apparent: the binding nature of legal obligations. Secondly, Westphalia gave rise to the rules and practice of diplomacy<sup>22</sup> as a tool of statecraft. In addition, it established the practice of calling a general congress to conclude major wars. Thirdly, to prevent future conflicts from degenerating into a carnage similar to the 16<sup>th</sup> century and the Thirty Years War<sup>23</sup>, states

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<sup>22</sup> Diplomacy of permanent embassies was first institutionalized in the 15<sup>th</sup>-century Italy and was slowly disseminating throughout Europe. This perfusion was almost completely halted in the 16<sup>th</sup> century as many Catholic principalities refused to have any contacts with Protestant ones and vice versa.

<sup>23</sup> The human and material destruction brought by the Thirty Years War was unprecedented. Certain parts of Europe came to resemble wastelands. Germany and Bohemia were particularly hard hit: population losses in Germany were anywhere between 30 and 69 percent with about 12,000 towns and villages razed out and in Bohemia out of approximately 35,000 villages only some 6,000 were left standing (figures quoted in Holsti, 1991: 28-9). Importantly, a substantial part of this devastation was caused not in the actual battle, but by brutal

agreed on the necessity to outline conditions of legal and illegal use of military force. This included the problem of who and how can one use it. Military intervention by a state in another state was, except the very few instances in which it was deemed to be lawful, considered to be an illegal act. Private armed violence in the international arena was deemed illegal as well and was to be spryly resisted by states. In other words, all violence had to be state-authorized. Only public authorities were permitted to launch a war and only sovereign (and imperial) states were considered such authorities. States' engagement in war was moreover to be regulated by laws of war that would prevent atrocities of the recent past.

Significantly, the settlement expressed the legal equality of states. Article 5 of the Treaty of Osnabrück stipulated that "there be an exact and reciprocal Equality amongst all the Electors, Princes and States of both Religions, conformably to the State of the Commonweal, the Constitution of the Empire and the present Convention: so that what is just of one side shall be so of the other (quoted in Armstrong, 1993: 34)." While not having equal input in the negotiations, all those who fought in the war were present at peace deliberations in Westphalia and with the exception of the disgruntled Papacy all signed the final Treaties. The United Dutch Provinces and Switzerland, whose sovereignty their preambles collectively recognized, were also parties to the Treaties. Even a state like England which did not take part in the actual combat was mentioned in the Article 17 of the Treaty of Osnabrück as an ally of some signatories (Armstrong, 1993: fn. 35), thus implying that it belonged to the same society of states.

But the clearest indication that there was an international society of states and that system transformation had indeed taken place was a series of wars (1661-1713) between Louis XIV's France and its opponents. Whereas Louis XIV fought his early wars with powerful allies like

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mercenary troops who, as the conditions of war worsened and hunger and diseases spread, escaped from control of their political masters and fought private battles. Whole units would switch sides when promised booty or would on their own pillage in search of food. Rape, torture and murder of civilian population as well as burning of villages were common.

Sweden on the side, once suspicion grew that by his ceaseless dynastic and territorial claims he might have in fact sought to jettison the new fundamental constitutive principle and attain a universal monarchy which only a few decades ago the Habsburgs were believed to aim for, he was gradually deserted and the number of his enemies grew. Whatever their differences, the countries of Europe progressively closed their ranks to oppose France and maintain the system of multiple states.

## CHAPTER 4

Modern vs. medieval system

In what way has the modern international system differed from the medieval one? Most importantly, in the different structure of distribution of political authority. Abolishing the hierarchical principle of vassalage and locating final authority in the territorially-bounded state *was to* and *did* change fundamentally the character of the conflict among units in the system and the manner in which it was channeled and played out. Above all, unlike in the Middle Ages, *wars between sovereign states have not been about different interpretations of political authority over territory.*<sup>24</sup> While they most often have been about territory, with the exceptions discussed below, they have not been about what one has *right* to do on that territory, about what it means to govern it. When state X lost a region to state Y, X would automatically assume over it final authority. X as well as Y would fully understand that X would not have in the locality that went to Y the right to appoint prelates, judges, sheriffs, or public notaries; to hear court appeals, collect taxes, harvest beet crops, mine precious metals, or conscript recruits.

Furthermore, wars came to be conducted in a regulated, not haphazard, fashion; that is, with a proper procedure and according to rules. If in the latter part of the 17<sup>th</sup> and 18<sup>th</sup> century interstate squabbles had broken out over, for example, dynastic succession, they would have been solved quite differently from incessant succession conflicts in the Middle Ages. The leaders of the states which contended for a royal throne did not attempt to beat their opponents in any way they can. They would generally not choose to resolve their bickering by kidnapping, imprisoning, burning, poisoning, or assassinating each other or by impetuous intervention against each other's country. Instead, they would declare war on their enemy in conformity with the entrenched

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<sup>24</sup> The 1648 settlement, however, did not abet conflicts the essence of which were different interpretations of political authority over oceans.

diplomatic ceremony, fight in accordance with the laws of war, and once peace treaty was signed, cease all military activities directed against each other's territory.

As for civil wars, while outside states were commonly interested in their outcome, their armies would not intervene across borders to influence it. The doctrine of non-intervention in turn allowed the elements of medieval conduct to reappear periodically on the domestic level. Hungarian Protestant nobles might have been among the first rushing to assist their Czech brethren in 1618 against the Habsburgs, but when they engaged in a lengthy rebellion against the same target in the late 17<sup>th</sup> and early 18<sup>th</sup> century, no Protestant state intervened coercively on their behalf. When captured, they might not have had, unlike their ill-fated Bohemian co-religionists in 1621, their tongues cut out before their execution and after it their corpses quartered, but they were still commonly hanged as had been prisoners of war in the 16<sup>th</sup> century. The Habsburg troops could not do and never did the same to captured foreign soldiers, but domestically they knew they could do it since it was them, not the insurgents, who were protected internationally. Unlike the Treaty of Augsburg (1555) which ended the Schmalkadic wars and first prohibited armed interventions into the domestic jurisdiction under the pretext of religion (*cuius regio, eius religio*), the Peace of Westphalia actually achieved it. In fact, there was only one military intervention in the 18<sup>th</sup> century.<sup>25</sup>

It is thus not surprising that the second half of the 17<sup>th</sup> and 18<sup>th</sup> century got despite its many wars the label "legalistic age." Until 1795 no state had its sovereignty arbitrarily extinguished (Wight, 1977: 159). Statesmen and stateswomen assessed their actions and actions of their political opponents in other states with reference to the Westphalian settlement which came to be regarded as a kind of constitution guiding the European society of states. According

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<sup>25</sup> I thank Prof. Kal Holsti for this information. The intervention in question was the 1787 Prussian incursion into the Dutch civil war which started in 1785. The Prussian King Frederick Wilhelm II invaded the Netherlands to free his sister and the wife of the deposed Stadtholder William V, Princess Wilhelmina, after a faction of radicals ("the Patriots") had captured her. As the Prussian army defeated the Patriots, William returned to power.

to Martin Wight, "subsequent peace treaties, down at least to Teschen in 1779, expressly confirmed Westphalia and were codicils thereto (Wight: 1977: 113)." Though many came to perceive Louis XIV to be an opponent of the new society of states, the diplomatic academy (first on the continent) he established in 1712 trained the would-be diplomats heavily in international law (at the time called *le droit public de Europe*) emphasizing the Treaties of Münster and Osnabrück as a starting point for understanding European affairs in the 18<sup>th</sup> century (Keens-Soper, 1972: 349). In diplomatic history classes special attention was paid first to the three years of negotiations which preceded the 1648 Peace and then to post-Westphalian diplomatic relations (Keens-Soper, 1972: 349).

If the system of states consolidated in the late 17<sup>th</sup> century can justifiably be called "international society," it is because of the general efficacy of international rules. A vast corpus of international law has in general been adhered to by states. Unlike medieval dicta, many of which had been impotent by being almost permanently contested, sovereignty norms have been potent because they were generally respected. This is not to say that international society, unlike other political societies, is a perfect association where members always act in accordance with societal rules. One cannot seriously maintain either that grave violations of rules of sovereignty have not sporadically occurred or that the fundamental constitutive principle of sovereignty as such was not under existential threat. The argument about the potency of international law therefore requires some assessment of the extent of the most serious of those violations and threats. The following part offers that.

**SOVEREIGNTY LEGITIMATELY EXTINGUISHED** Perhaps the most dramatic 18<sup>th</sup>-century violation of both rules of sovereignty and the constitutive principle of sovereignty was the final partition of Poland in 1795 by Russia, Prussia and Austria. After this apportionment, Poland as a sovereign state ceased to exist. Even though this act could not be more *illegal*, other states, but most

importantly Great Britain, found reasons not oppose it. Britain was at the time leading the anti-French war coalition and could not risk estranging the three partitioning states which were its allies. The eradication of Poland hence became *legitimate*. More recently, the Baltic republics were similarly obliterated from the map of Europe in 1940. For reasons of not alienating its crucial wartime ally, the U.S. and Great Britain conceded in several conferences of the Grand Alliance that Estonia, Latvia and Lithuania would remain part of the Soviet Union after the conclusion of the war.<sup>26</sup>

Yet it is difficult to find other cases of sovereign states being legitimately overtaken by other state(s) against their will. Those who doubt that there is a thing called international society of states or that it is a meaningful association should ask themselves how many cases there have been of sovereign states which ceased to exist without their consent. After 1945 only South Vietnam can be considered to fall in this category. In 1975 South Vietnam, recognized by approximately 60 countries and a member of several IGOs though not the UN, was incorporated into North Vietnam by conquest without much protest from other states. However, this case is not without ambiguity as the 1954 Geneva Accords which divided Vietnam into two territorial units (North and South) expected only *provisional* division. Sovereignty is by its very nature a permanent, not transient, status and the two Vietnams were envisaged to unite one day – that is why it is unclear whether one can talk about South Vietnam's sovereignty being legitimately extinguished as in the case of Poland.

This record is quite striking compared to the very high "turnover" rate of units in the Middle Ages. Not less remarkable is the fact that Poland, Lithuania, Latvia and Estonia were eventually restored to their sovereign status. International society has been an exclusive club

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<sup>26</sup> Still, both the U.S. and Britain had officially contended that they did not recognize the Soviet annexation. Until the Baltic republics became again independent in the early 1990s, their governments-in-exiles maintained embassies in Washington and London, though their function was purely symbolic.

continuously wary of expanding its ranks, yet in 1918 the WW I victors, and among them especially the U.S., were resolved to restore Poland's sovereign existence. Once the Baltic republics declared their desire to be sovereign in 1990-1, they were recognized even before the dissolution and without the blessing of the Soviet Union. Such speedy recognition is in the world of states so negatively predisposed toward domestic separatism indeed a great rarity.

But even if one chooses to overlook these episodes, it is still essential to realize that for every Poland, Lithuania, Latvia and Estonia that were wiped out because of their weakness vis-à-vis other states, there are Liechtenstein, San Marino, Monaco, Andorra, or Luxembourg, that have been preserved despite it. Why did not the states of the German Confederation in their ardor to unite and create a single sovereign state just forcefully incorporate the tiny Duchy of Luxembourg, one of their members? Why did not the Italian states in a similar unification drive sop even tinier San Marino or the Papal state? The number of similar cases skyrocketed with the dilation of international society beyond Europe in the 19<sup>th</sup> and especially 20<sup>th</sup> century. States of the Persian Gulf, the Caribbean or Oceania are in some cases miniature territories and populations and could not possibly withstand armed attacks of larger states. One must also add into this category states which are not necessarily of small size, but are weak internally (there are, of course, also states that are both small and weak internally). The history of Latin American states from the time of their independence in the 1820s has until recently been one of recurring revolutionary insurgencies, military coup d'états, dictatorships, debilitating foreign debts, not to mention poverty. Even more grave have been, as suggested earlier, the conditions of empirical statehood in sub-Saharan Africa. Yet none of these state has perished and their existence has been protected by international law. Poland, in effect a country without central government in 1795, was eliminated as a state, but many other desperately and continuously fragile states (such as Haiti, sovereign since 1815) have not been.



MILITARY INTERVENTION Military interventions, defined as the use of regular armed forces of one sovereign state on the territory of another without declaration of war and with the intention of affecting the disposition of its political authority, have been periodically occurring in international life, though in any notable fashion only since 1815. How often? Henk Luerdijk (Leurdijk, 1986: 238-50) painstakingly compiled a unique synopsis of interventions between 1815 and 1975 and came up with forty five incidents. Whereas Leurdijk briefly comments on each case, he does not examine them in terms of their legality. This is unfortunate because international law has always recognized that there exist *lawful* military interventions. Invitation of a government, counter-intervention to repel third party's illegal intervention, self-defence of a territory, protection of one's nationals against abuse by another government and collective consent of international society in customary law have been regarded as legal. In 1945 some of them became incorporated into the UN Charter which has so far been consented to by 186 states: the right of self-defence is asseverated in Article 51 and the consent of international society as expressed by the UN Security Council in Chapter VII.

Looking through these lenses many examples given by Leurdijk are not illegal interventions. At least eleven of them are interventions by solicitation. On the top of that, the list includes events where the label "military intervention" is rather doubtful.<sup>27</sup> The doctrine of non-intervention applies solely to sovereign entities and solely in the state of peace. While this is not a place to examine in detail each of Leurdijk's cases, the point I wish to make is that when taken as a whole, the incidence of peacetime military interventions by a sovereign state in another sovereign state which were not possible to justify by international law (or, more precisely, justified *outside* international law) has been rather small. The most jutting and unambiguous cases in this category were the 1821 and 1823 Holy Alliance military interventions in Naples,

Piedmont and Spain; several U.S. landings in Caribbean and Central American countries in the first quarter of the 20<sup>th</sup> century; and the 1956 and 1968 Soviet interventions in Hungary and Czechoslovakia (here the USSR was joined by four other Warsaw Pact states). All of them occurred without the previous consent of the invaded states and international society of states militarily opposed none of them.

The Holy Alliance interventions were designed to restore the overthrown monarchical governments in the name of "dynastic legitimacy." The agreement of conservative great powers after 1815 to defend royal regimes against republicanism without necessarily having prior consent of sovereign European governments certainly went beyond Westphalia. It smacked of the 16<sup>th</sup>-century Counterreformation crusade of the Habsburgs to reconvert the Protestant principalities to the "only true faith." One cannot, however, overlook the very limited success of this enterprise. After the three interventions no new ones were mounted because some states, but most notably Great Britain with respect to Europe and the U.S. with respect to the Western hemisphere, repeatedly emphasized that outsiders had no business of being unwanted restorers of failed royal families.

The era of "progressivist" U.S. presidents represents probably the most interesting episode in the history of interventions. Starting with Theodore Roosevelt, the U.S. engaged in a series of interventions in neighbouring failed states. While some of them were justified either by protection of the U.S. nationals who found themselves unprotected amid civil wars or by government invitation (Nicaragua 1912) or by self-defence (Mexico 1914, 1916), few were defended by exclusive references to the desire to establish "republican principles of constitutionalism" in place of "despotic dictatorships." The most fascinating aspect of the latter ones is that they culminated under the presidency of Woodrow Wilson, one of the strongest

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<sup>27</sup> One such case would be the 1919 Romanian attack against the Marxist government in Budapest. This was an

voices for subordinating state conduct to international law. According to one author, Wilson by his 1915 landing in Haiti and 1916 occupation of the Dominican Republic stepped "beyond the bounds of international legality, but he explicitly excused these actions by appealing to the higher standards of morality (Calhoun, 1986: 259)." The expeditions were designed to satisfy "demands of humanity" and bring about "proper forms of political freedom and democracy;" they were for these countries' own good even if against their consent (Calhoun, 1986: 24, 117). While in some cases warring factions were actually looking forward to American invasion to sort out the domestic turmoil (Cuba 1906), with the increasing interventionism the U.S. incurred considerable wrath all over Latin America. Later U.S. Presidents Harding and Coolidge were much more weary to commit troops to projects of Wilsonian reformation<sup>28</sup>, principally because the countries that were coercively interfered with were not eager to accept them. They came to realize that the people of the invaded countries might, in the words of one State Department official at the time, "prefer misgovernment under their own leaders to good government under foreign tutelage (Munro, 1964: 110)." In the face of strong international and even domestic hostility, Presidents Hoover and Roosevelt repudiated the interventionist policy.

If there was, however, a military intervention in the 20<sup>th</sup> century that offered a medieval spectacle *par excellence*, it was the 1968 invasion of Czechoslovakia. The massive intervention without the consent of the Czechoslovak government and kidnapping of its political leadership to the USSR was exonerated in terms of "socialist international law" that allowed only limited "limited sovereignty" (Braun, 1975: 169-70, 186). As the medieval claims of the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>-century anti-papal Emperors, the anti-imperial Italian cities, the Hussites or the 16<sup>th</sup>-century Sweden, England and Protestant-turned principalities could not be reconciled with the fundamental constitutive principle of vassalage, so "socialist international law" could not be made

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operation on the sovereign territory of Hungary with which was Romania until June of 1920 in the state of war.

compatible with the fundamental constitutive principle of sovereignty and international law. This "law" (also known as the Brezhnev doctrine), never assented to by Czechoslovakia or any other country, did not require the socialist states to seek approval of the government in Prague before intervening; instead, it was the "fraternal socialist community" as a whole and "led by the Soviet Union" that determined whether to intervene once the socialist system of one of its governments seemed to it on the verge of being "subverted."

But once more, as with the Holy Alliance cases of military intervention, the conduct of the USSR as displayed in 1968 was exceptional. Despite many fears in the West of the Soviet intentions stemming from the nature of communist ideology that was as such fundamentally incongruous with the system of sovereign states, the Soviet Union after 1945 for the most part behaved in accordance with basic tenets of international law. Its 1979 intervention in Afghanistan occurred on invitation of the Afghan Marxist government and was also justified in this fashion, not in terms of "socialist international law."

Whereas in the Middle Ages armed interventions and counter-interventions concerning the claims of supplementary rights or the desire to limit or discard some or all vassal obligations were the reality of everyday life and were accepted as a normal condition of political existence, in the Westphalian system they have always been exception to the rule precisely because they have been prohibited as ultimately sabotaging this system. They would become major international events and their legality would usually be put under close scrutiny by international society of states. As for the interventions justified in extra-legal terms, their incidence has been quite exceptional. Even if in the cases of the Holy Alliance and the USSR nothing would be done about them because counter-interventions posed too big risks for those states that objected (in

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<sup>28</sup> There were only two interventions after 1920: Honduras in 1924 and Nicaragua in 1926.

1956 and 1968 the U.S. and NATO faced the vista of nuclear war)<sup>29</sup>, their rate of occurrence has been very low and certainly not so significant as to vindicate speculations about system transformation.

EXPLICIT DRIVES TO JETTISON SOVEREIGNTY AS A CONSTITUTIVE PRINCIPLE While the growing incidence of military interventions which are justified outside of international law can bring the death of the system of sovereign states by thousand cuts, the most radical way to achieve it would be by overrunning the system and gaining in the process the legitimacy of the units within it. Ancient history offers two excellent examples of such systems transformations: the establishment of the Macedonian empire in Greece (322 B.C.) from the Greek city-states system and the Chi'in empire in China (221 B.C.) from the systems of multiple principalities. In each case one of the units within the system militarily defeated some of its major systemic competitors and other units for various reasons bandwagoned with the victor -- thus augmenting the victor's momentum. In the hope of fulfilling their aspirations which were impossible to attain in the previous system, they would back the challenger's drive even if they in fact shared few of the challenger's own objectives. Even if they did not actually desire it, the legitimacy bestowed on the challenger inadvertently led to the end of horizontal relationships -- and binding rules and understandings that, however imperfectly, governed them -- and gradual formation of a hierarchical relationship in which only one unit would ultimately have final authority. Such revolutionary transformation was attempted twice in the modern era: by Napoleonic France in the early 19<sup>th</sup> century and by Hitler's Germany in the early 1940s.

Both Napoleon and Hitler had sought to replace the horizontal, pluralistic principle of sovereignty with a vertical, hierarchically-based "new order." For a short period they were successful: they managed to occupy almost all of continental Europe, dismember the existing

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<sup>29</sup> U.S. "progressivist" interventions took place in the time of grave tensions or war in Europe and generated

states, and establish an empire surrounded by suzerain, not sovereign, polities.<sup>30</sup> Napoleon sought a pan-European, French-based empire in which progressive French ideas and law would have replaced the “reactionary” monarchical doctrines and ensured “free” development of nationalities. That this goal was a fundamental contradiction was revealed only later: Napoleon’s rule enjoyed initially genuine legitimacy in many quarters. The Poles, Slovenes, Croats, Austrian Serbs, many Italians and Germans, to give several examples, welcomed him as a liberator. Outside Europe, liberal, pro-Napoleonic elites set off revolutions against pro-Bourbon royalist rulers all over Spanish Latin America. Several imperial states and Denmark were his early allies. The conquered (some would have said liberated) countries typically got a French ruler, preferably from the Bonaparte family, who was ultimately answerable to Napoleon. They also received the French civil code and republican institutions. If these rulers found themselves facing domestic unrest, as they did first in Spain and later in several German and Italian states, the French army was at hand to intervene and repress it. By May, 1812 France, re-living the pretensions of the medieval Papacy (in 1804 Napoleon crowned himself Emperor in the presence of the Pope), was the arbiter of continental Europe. It faced only one serious threat to its “new order”: Great Britain. Its Prime Minister Pitt from early on emphasized that at stake in this conflict was nothing lesser than “the Public Law of Europe.” Russia, the only remaining great power out of the reach of the Grand Army, was a French ally, though a reluctant one, and the only sovereign state overseas, the US, was as France fighting the British.

Hitler’s Germany also envisaged to replace the system of sovereign states with a “new world order.” It was to be based on the rule of superior over inferior races and not the coexistence of diverse states. “Rotten plutocracies” (France, the UK, the US) and “the

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minimal reaction of European powers.

<sup>30</sup> The list of suzerain entities would include the Ligurian, Batavian, Cisalpine, Helvetian, and Illyrian republics and the Grand Duchy of Warsaw during the Napoleonic expansion, and Croatia, Slovakia and Vichy France

Bolshevik cancer" (the USSR) were to be weeded out as independent political entities. Inspired in part by the myth of the Hohenstaufen imperial dynasty's campaigns to expand its direct rule beyond Germany's lands and achieve *dominus mundi* (the plan of attack on the USSR was code-named "Barbarossa"), at the core of Hitler's "Thousand Year" empire was to be a substantially enlarged Germany. It would be surrounded by racially reliable vassal-like states. The lower peoples who would not be physically exterminated would work -- virtually as slaves -- for the superior races.

While there is little evidence that these goals were shared outside Germany, by promising to alleviate injustices felt by many European states and peoples, Hitler's aggressive and expansionary policies, as was the case with Napoleon, initially generated support that was not insignificant. Hungary, Romania, Finland, Bulgaria by bandwagoning with Nazi Germany all hoped to recover lost territories. Italy hoped to gain additional ones. Slovakia and Croatia were grateful to Hitler for "guaranteeing independence of small peoples." In addition to Croatia, Hitler's armies were welcomed as liberators in various parts of Austria, Slovenia, Ukraine, Lithuania, Latvia, Estonia and the Caucasus. By November, 1941 Germany became as did Napoleon some 130 years ago the arbiter of continental Europe. As with Napoleon the transformation of the system of sovereign states seemed very imminent: with some countries being Germany's allies or neutral, other European states fell either under German occupation with collaborationist regimes or under direct German rule as part of Germany. The USSR appeared on the verge defeat as the Wehrmacht was closing in on Moscow and the U.S. stayed docile out of the European conflict. Outside Europe, expanding Japan was Germany's ally and it was difficult to find a South American government without substantial pro-Nazi sentiment.

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during Hitler's conquest. They came into existence not on the basis of mutual recognition, but out of French and German mercy. Their status was virtually that of vassals. None of them survived Napoleon and Hitler.

Great Britain was as in the early 1812 fighting the challenger of the system, but compared to the resources it had at its disposal against Napoleon it was in a much weaker relative position.

The nascent success of Napoleon's France and Hitler's Germany not only in terms of their military victories, but also in achieving legitimacy as either the challengers against the "old" system or as crusaders for the "new" order, vividly demonstrated that there was nothing preordained or sacred about the Westphalian system of states. It could have disappeared just as the Greek or medieval systems at some point in history disappeared. Sovereignty might have been replaced by kind of imperial legal order. If, however, neither Napoleon nor Hitler was able to complete their imperial drive by new "Treaties of Westphalia" which would corroborate a different structure of distribution of public authority, this indicated that the idea of international society was still alive. An overwhelming opposition of remaining states and resistance movements within directly occupied or indirectly controlled territories eventually developed to fight them for the restoration of the old system. There was on the part of most states *collective determination*<sup>31</sup> and *strength* to preserve themselves and the fundamental constitutive principle that made their independent existence possible. *Without either it would not persevere.*

#### Back to the Middle Ages?

Is this resolve to preserve the system of sovereign states in the face of contemporary changes listed earlier dwindling today? Are sovereign states being absorbed by other states whilst international society as a whole remains either indifferent or its members justify to themselves why they cannot do anything about it? Or are they at least increasingly intervening with armed force in each other's jurisdictions solely in the name of "higher principles" (today principally in the name of human rights) not known to international law? And what about

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<sup>31</sup> David Armstrong (1993: 243) in his work on the impact of revolutionary states on international society writes eloquently on this issue: "Paradoxically, international law seems to grow in significance whenever it is placed under the greatest pressure by a cataclysmic event, such as war, or by the deliberate challenge of a revolutionary



prominent actors outside international society of states? Are not their activities making sovereignty an empty shell?

Judging from the activities of states, there is virtually no evidence that international society may be in decline. In the largest armed conflict since the end of the Cold War a coalition of several dozen states participated in the 1991 effort to evict Iraq from Kuwait, a sovereign state Iraq forcibly annexed in August, 1990. In the excitement over the acquiescence of the Soviet Union U.S. President Bush might have pronounced a "new world order" -- by now a familiar historical slogan -- but the truth is that the Gulf War was a defence of the 350 year-old order. That is how old the idea that every sovereign state, no matter how small or weak (internally, externally, or both), has the right to independent political existence is.

A skeptic may complain that what happened in 1991 had little to do with international society and everything to do with selfish oil interests of the U.S. and other developed countries. It may be said that the rhetoric about preserving Kuwait was little more than a convenient window-dressing for Western greed and designs of continued economic dominance. Yet why would the West risk lives of its soldiers against the fourth largest army in the world equipped with chemical arsenals when it could quickly settle with Iraq and ensure its access to the old Kuwaiti oil markets? After all, Western relations with Iraq prior to 1990 were fairly good and the Kuwaiti oil wealth would be of no benefit to Iraq if it could not sell it abroad to those who demand it most. Could not the Western states dispense with a small state which was an absolutist monarchy without representative government or parliament and which, by Western standards, among others, discriminated against women and severely limited free speech? It would not be the first time, as we have seen, that a sovereign state disappeared from the face of the earth with other states' acquiescence.

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state. Major revolutions appear to force established states to rediscover and redefine both their social identity as

The answer is they could, but they and other countries chose not to. Likewise, they chose to protect the existence of Bosnia-Herzegovina, a country without oil or other economic lures. Once it was recognized as sovereign in 1992, it was not allowed to be dismembered and divided among the neighbouring states of Croatia and Yugoslavia. The neorealist writer John Mearsheimer (1997) might have well been right that in terms of human and other costs the partition of Bosnia would be a more sensible solution both for the people of Bosnia and for the U.S. and the other states policing the 1995 Dayton peace agreement. The country has been since 1995 a deeply divided society to say the least: loyalty to it is ensured only among the Muslims. Among the Croat inhabitants the attachment to a unified Bosnia is minimal and among the Serbs close to non-existent: both populations would prefer joining their "mother countries." It is quite probably the case that in the eyes of more than half of Bosnia's population Bosnia-Herzegovina is an illegitimate and artificial state. But both the costs of the outside states enforcing the peace and the dramatic internal problems with legitimacy and governability of the new state are of no consequence to the fundamental reality: unless all three domestic ethnic groups peacefully decide to split the state, Bosnia-Herzegovina will remain a unified, sovereign state with Croatia and Yugoslavia having no right to intervene militarily in its affairs. It is the international legitimacy of Bosnia that matters for its existence.

As for military interventions that occurred in the last several years, the great majority of them were lawful. Interventions in Iraq (both the 1991 counter-intervention to liberate Kuwait and the subsequent authorization of no-fly zones), Bosnia (the 1995 NATO bombing of Bosnian Serb positions) as well Somalia (1992), Rwanda (the 1994 French intervention) and Haiti (1994) were all authorized by the UN Security Council under Chapter VII. They occurred only after international society gave them its legal approval. In the case of two recent interventions in

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members of a society of states and the normative and juridical principles upon which that society is based."

Liberia (1990) and Sierra Leone (1997) the decision came from ECOWAS, a regional organization of sixteen West African states. The only deviation from this at present seem to be occasional transborder incursions in some regions of the world such as Central Africa. In the 1996-7 civil war in the Congo, regular armies of Rwanda and Uganda penetrated temporarily across borders to prop up anti-government rebels and all this happened without any adverse reaction either from the UN or the Organization of African Unity.<sup>32</sup>

But even this relatively minor deviation does not change anything on the following basic fact: *the split that occurred at Westphalia between international and domestic legitimacy (and was erased at the height of Napoleon's and Hitler's conquest) is today still very much relevant and it is the international legitimacy on which the existence of a sovereign state is predicated.* Whether the state as such and/or its government are domestically legitimate has no bearing on state authority as such. Both Bosnia as a country and its federal government may lack domestic legitimacy, but it is nevertheless a sovereign state with all the consequences that stem from this fact (above all, the protection against outsiders). Legitimate or not, Somalia does not even currently have a government, yet it continues its existence as a full state. On the other hand, that the Kosovo Albanians have regarded the Yugoslav state as highly illegitimate, declared an "independent Republic of Kosova" in 1991 and built their own government structures is irrelevant: whatever the political desires of its people, Kosovo remains in Yugoslavia because and only because other states say so.<sup>33</sup> Of course, the non-recognition as well as recognition of sovereignty has its real consequences. The main one for Kosovo is that it is being reduced to rubble since Yugoslavia as a sovereign state the right to protect its territorial integrity against

<sup>32</sup> But even in this case the interventions were justified by invoking the right of self-defence. Armed rebels opposed to the Rwandan and Ugandan governments had been organizing their operations from within the Congo's borders and the administration of President Mobutu Sese Seko was not willing or able to stem them.

<sup>33</sup> The Kosovars are only one of several post-Cold War exemplars. The same can be said about the Chechens in Russia, the Russians in Moldova, the Abchazians in Georgia, and the Serbs in Croatia. While the "Abchaz

secessionists. It is Yugoslavia and not the Kosovo Albanians that is protected internationally against military intervention.

The discussion so far clarifies the working of international society of states. If my observations are basically correct, then several implications follow about neo-medieval arguments and the rest of this study will address them. First, contrary to what Booth and others are inclined to claim, the distinction between inside and outside, between domestic and international politics is still very much tenable. There is still a world of difference between Yugoslavia's armed activities in Kosovo or Russia's in Chechnya and a similar use of force by Yugoslavia in, say, neighbouring Hungary or by Russia across its border with Poland.

Yet we can talk about the return to the Middle Ages only if this distinction breaks down and this would occur in the event that the military interventions beyond the bounds of international legality became widespread and legitimate. *Legal orders do not apprehend a higher principle than the law itself.* As the dramatically mounting claims of final authority in the 16<sup>th</sup> and early 17<sup>th</sup> century were incomprehensible to the legal order based on the constitutive principle of vassalage and when widely accepted eventually brought about system transformation, so would the sharply rising extra-legal justifications of armed intervention when broadly accepted point to change of the legal order based on the constitutive principle of sovereignty. Incessant interventions in the name of principles above the law of practical association that international society is – whether it is “monarchical legitimacy,” “republican constitutionalism,” “socialist international law,” or “human rights and democracy” -- would do just that. If NATO countries intervened in Yugoslavia purely on the basis of their idea of appropriate domestic behaviour of states rather than because they have legal basis to do so and if such conduct becomes rampant in the future, then indeed sovereignty will disintegrate and we may be in a neo-medieval era.

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Republic” and the “Transdester Republic” have been more or less able to resist their reintegration in unitary-state

Second, it should be clear that arguments made by Lipschutz and others about loyalties moving away from the state or multiple identities are beside the point. It poses no threat whatsoever to the system of sovereign states if individuals around the world do not identify themselves primarily or solely as citizens of their states, but as Newfoundlanders, Kurds, homosexuals, environmentalists, proletarians, consumers, feminists, Europeans, aboriginals, or Hindus. Nor do they have to have loyalty to only one state. Catholics can easily feel loyalty also towards Vatican and diaspora Jews towards Israel. Finally, far from having on one unwavering state-centred political identity, they do not even have to know who they are. In the early 20<sup>th</sup> century Macedonia, a province of the decaying Ottoman monarchy, became a flashpoint of fiercely competing claims as its inhabitants became subjected to relentless propaganda of Serbia, Greece and Bulgaria and could not decide if they were in reality Serbs, Greeks, Bulgarians or a distinct people called Macedonians. A contemporary illustration would include today's citizens of Belarus who cannot quite say what, if anything, distinguishes them from the Russians. What people around the world, however, cannot do if the system of sovereign states is to persist is to transfer *en masse* their political loyalty to those who might want world government or those who seek to achieve empires of the type Napoleon and Hitler pursued or Marx's theory of proletarian revolution envisioned; or to drug cartels, mafias, and other entities outside international society of states that directly threaten or may in the future challenge the sovereign state as the bearer of final authority. If its agencies performed activities for which they did not receive consent of the member states, this category would include even the EU.

This is not to say identity and loyalty-related issues are somehow politically unimportant. Quite the opposite. Perhaps the most prominent of them in the modern era have been conflicts related to ethnonational identity. The phenomena of Bosnia and Kosovo discussed above are

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structures, the "Republic of Krajina" and the "sovereign Chechen Republic" were not so lucky.

only its latest examples. A quarter century ago, when this issue drew at best marginal attention among IR theorists, Walker Connor (1973:2) estimated that fully 68 states (slightly more than half of all states at the time) were "troubled by internal discord predicated upon ethnic diversity." Since at least the time around the final partition of Poland, the great number of states -- whether large or small, wealthy or poor, weak or strong, old or new, democratic or authoritarian, have had to reckon with either antagonism or outright disloyalty of those groups of citizens who felt *politically separate* from the majority population. This sentiment, translated into demands for self-government within or outside the borders of the original state, have at best brought permanent constitutional paralysis (Canada, Belgium) and at worst recurrent armed conflicts (the Poles vs. Russia in 1794, 1830-1 and 1863-4, the Chechens vs. Russia in 1824-59, 1877-8 and 1994-6). There are even states such as Burma or Sudan which have since their birth never known anything else but ethnic civil war. But despite the prominence of ethnic intrastate tensions (including its violent forms), they have endangered only particular states, not the state as such. Those groups who have wished to separate wanted nothing else than to become a recognized sovereign state or, alternatively, become part of another state. *Ethnonational conflicts have not been occurring outside of the framework of international society of states.*

Third, no danger to the structure of distribution of public authority comes currently from private actors active in international political economy or "global civil society." General Motors, Amnesty International, McDonald's, no matter how powerful or wealthy they may be, do not act as if they had the right to make and enforce laws and, hence, contrary to what Lipschutz says, in no way deny sovereign rights. *They are powerful only to the extent they can influence state conduct and this power is no historical novelty.* They do not, however, challenge states, even the weakest of the weak, by trying to govern their territories and hiring private armies. Yet, if private market actors were, in fact, postmodern *authority* equivalents of medieval kings, as

Deibert (1997b: 185) suggests some of them are becoming, this is precisely what the analysis of the previous chapter projects they should attempt. If sovereignty is indeed a courteous pretense as Strange tells us, why do we not have, say, a wealthy corporation like Philip Morris Tobacco, which has very good reasons to resent most states it operates in and which also has, according to one source, higher sales than the GNPs of 142 states (Kegley and Wittkopf, 1997: 194), shedding it? Why does not the company in possible alliance with fellow TNCs or even some states take an example of the Hanseatic towns between the 13<sup>th</sup> and 16<sup>th</sup> centuries<sup>34</sup>, put forward some justification outside of international law (say, for instance, "the right of unfettered global production"), hire an armed force and then land in a government-less, poverty-stricken state like Somalia and take a chunk of the Somali territory where it could without any government interference at all run a cigarette production facility that requires in any case largely unskilled labour? After all, the costs of army policing and defending the previously uncontrolled Philip Morris territory could be well counterbalanced by not having to worry about the costs imposed by taxation, wages, negative advertising, anti-tobacco lawsuits, collective bargaining with unions, intrusive and oppressive health ministry rules, product quality control, labour and workplace hazard regulations, or unemployment and pension premiums.

If this scenario seems absurd<sup>35</sup>, it is for a very good reason. TNCs and other non-state actors understand, more unconsciously than consciously, the *limits* of their power and do not act

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<sup>34</sup> The towns of the German Hansa were, as were most of the cities in northern Italy, chartered by the Empire. Their joint commercial interests recurrently contradicted those of the Emperor and various kings and dukes. Like their Italian counterparts in the Lombard League, the towns of Hansa were not shy to build infantries and navies and use them against those who thwarted their economic objectives. The Emperor might have been the person entitled to sanction legally the use of military force, at various times but the Hanseatic towns *on their own* fought Denmark, France, Norway, Poland, England, Spain, Holland, the Teutonic Order, Sweden and even the Emperor himself (Dollinger, 1970).

<sup>35</sup> What may seem inconceivable today was not necessarily so in the last quarter of the 18<sup>th</sup> century. Some high officials of the British East India Company -- chartered by the Parliament in London -- were indeed behaving as if they were medieval kings and the matter came eventually to the attention of the government in London. Edmund Burke was one of the Parliament legislators trusted with drawing up an enactment that would have curbed illicit activities of the Company. After Burke had had a chance to probe the magnitude of the problem, he remarked that the East India Company was "a state in the disguise of a merchant (Stanlis, 1963: 474)." Though the

as if they had public authority. They accept that the state is a monopoly lawmaker and that, as such, it has a right to tax and regulate (Hirst and Paul, 1995: 434). They are quite aware that it is only the state that can provide legal enforcement and physical protection of assets and lives and greatly fear investing in all places that fail to provide that. Far from thinking about subordinating "Somalias," global market agencies quickly dislodge them as objects of economic (or any other) interest when confronted with their domestic pandemonium and lawlessness. These actors fully appreciate that states are the only legitimate actors internationally to establish and secure property rights under which financial markets and other economic actors are based and only they can guarantee the minimum of stability required for financial competition to develop (Pauly, 1995: 382, Hirst and Paul, 1995: 429). Yet, as already emphasized several times with respect to states, unless non-state actors act *independently* of and *beyond* the state system as if they had public authority and this is regarded legitimate within the very same system, we cannot talk about relocation of authority and change of the system. If Jan Scholte (1997b: 441) wonders even after his confident dismissal of the state's capabilities that "the state survives and shows precious little sign to date of dissolving in the face of globalizing capital," it is because he does not understand that the state's existence does not rely on global capital markets.

These remarks should not be interpreted as an exertion to trivialize the increased political significance of private market agencies or to deny that their interests often conflict with interests of states. It may well be the case that the incidence of TNCs appearing to blackmail, pressure, threaten, cajole or blackmail state governments, even the most powerful ones, has been on the rise. However, it must be recognized that relations between states and markets, even conflictual ones, occur *within*, not outside, the system of sovereign states and are thus not about challenging the structure of the distribution of political authority. They are conducted according to mutually



accepted rules devised by states. This has several implications. A minor one is that governments can always maintain that if they made decisions in accordance with the wishes of private economic actors (who are creations of states to begin with), they acted in the interest of their states and populations and *extract advantages* offered by these actors.

A more important one, though, is that by virtue of their political authority they can always reverse these decisions and *legally* and *legitimately* act against these wishes. Those who claim that it is inconceivable that states today would act against the most powerful economic actors refuse to acknowledge, again, that political and economic *costs* do not eliminate *political authority*. While a state may for reasons of economic benefits comply with the demands of private economic actors, it has always a *legal* and *legitimate* option to decide otherwise<sup>36</sup> and control market forces, in cooperation with other states if necessary. The same, however, is not true of the reverse. Once a state rules in a certain way, these actors do not have a legal and legitimate option to act other otherwise. Philip Morris has no other option but to put up with the restrictions imposed by states in which it operates and will operate in the future.

One can thus see that what Strange notes as a paradox about the relationship between state authority and "market authority" is no paradox at all. States might have liberalized their domestic and international economic policies for multitude of reasons, but not because they have in any way intended to weaken their own authority under the rubric of "reasons of the state." Their right to govern, be obeyed and enforce this obedience is in no way compromised. Rightly or wrongly, in the 1870s states believed in tight monitoring of international movement of goods, but cared minimally about the transborder movement of finance or personnel; in the 1930s virtually all of them imposed strict controls on movement of goods, finance and people; and in

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did not go completely away until 1858 when the Parliament revoked its charter and thus voted it out of existence.

<sup>36</sup> Albania, Burma and North Korea for a long time willingly shut themselves out from the outside world (North Korea continues the policy of complete isolation to this very day). State and non-state actors, both economic and

the 1990s many of them may believe in unimpeded movement of goods and finance and still maintain rigid control over who can enter and reside on their territories (including the EU). In each of the cases, states implemented policies which they perceived were in their best interest and when these perceptions changed, their policies changed as well. What did not change in any of these cases, however, was their *right* to change them. There is no clear reason to think that current developments in international political economy are either irrevocable or that they somehow point towards transformation of international political system. Instead, as Alexander Wendt (1994: 393) and Stephen Krasner (1995) point out, globalization processes have caused reorganizing and redeploying of state power, not a withering away of the state. It is presumably this reorganization and redeployment that the two authors cited by Strange, Polanyi and Braudel, had in mind when they talked about the "swinging pendulum."

But what about those non-state actors whose transborder actions actually gravely violate international rules agreed upon states? What about drug cartels in Colombia or eastern Burma which in the conditions of civil war and domestic chaos in fact control by physical force some parts of these countries and trafficking across boundaries with illicit substances? Or mafias on the Italian island of Sicily or increasingly in various places in the former USSR which may not directly control territories, but whose violent practices seem at times ubiquitous and without limit, so much so that they raise concerns about destroying state monopoly of enforcement, and which also engage in miscellaneous criminal transborder activities? While there can hardly be doubt that trafficking in illegal commodities – everything from narcotics to nuclear material -- goes against the rules of the state system, the violence that comes with this activity does not -- it is primarily domestic in nature. It is the Colombian narcotic production that menaces, say, the U.S. and not the brutality unleashed frequently by the "drug barons" against people working on

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non-economic, had for the most part access to these countries denied. While economic and social costs of this

their plantations or against the government forces.<sup>37</sup> Still, states have recognized transnational organized crime as a major problem facing them, placed it high on the international agenda and resist it (though not always successfully) as illegal and illegitimate.

What makes the fight by international society against transnational organized crime easier comparing to, say, Napoleon or Hitler (and ignoring, for a moment, their immensely unequal coercive power) is that organized crime does not aspire to *legitimate* political rule. It may defy current international rules, but it does not seek new ones. It does not claim the right to govern and displace the sovereign state and its authority in the name of a "new order." It equally does not insist that the current structure of distribution of political authority is unjust and worthy of condemnation. Moreover, transnational organized crime does not solicit, nor does it get, support and loyalty of individuals: it is able to achieve obedience through pure physical coercion. If we apply Ruggie's and Giddens' definitions from the beginning of Chapter 3 together, then transnational organized crime cannot even be said to be engaged in politics.

Private armed groups that go under the politically charged name "terrorist groups" belong to a different category. They do fight states for political reasons. However, they fight against particular states, not the state as such.<sup>38</sup> Usually, they target countries for their political beliefs and policies with the intention of changing or at least weakening them, or they participate in ethnonational struggles for self-determination. Although the former type of attacks may draw some support, even among states, somebody's terrorists are inevitably heroes and liberators to others, especially when it comes to the latter type. The Serbian Black Hand, whose 1914 killing of the Habsburg successor precipitated the First World War, was labeled "terrorist band" by

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closure were horrendous, the decision of these states was nevertheless *legal* and *legitimate*.

<sup>37</sup> Perhaps the only contrary case at present is Thailand. Due to porous Thai-Burmese border, Thailand feels the effects of armed violence caused by a crime organization from the other side. The Burmese troops have in their offensives not infrequently pushed the drug producers across the border with Thailand.

Austria-Hungary but cheered by many Bosnian Serbs who wanted Bosnia-Herzegovina to separate from Austria-Hungary and join Serbia. By the same token, the violent actions of the Irish Republican Army, the Kurd Workers' Party or, most recently, the Kosovo Liberation Army have elicited different levels of support among Catholics in Northern Ireland, the Kurds in southeastern Turkey or the Kosovo Albanians and each time they have been dubbed "terrorist" by Great Britain, Turkey and Yugoslavia respectively.

Even if they operate just within confines of target states and are not international actors, private armed groups are not recognized as legitimate by international society of states as a whole, though sometimes they may receive tacit assistance of very small number of states. There can be said to be only two instances when private armed groups were accepted as internationally legitimate: the "national liberation movements" against Portuguese and South African colonial rule and the Palestine Liberation Organization (PLO). After Portugal had ignored the unanimous consensus on decolonization, refused to leave its colonies of Guinea-Bissau, Cape Verde, Angola and Mozambique, and fought the anti-colonial groups there as "terrorists," the UN Security Council in resolution 322 (1972) affirmed the legitimacy of their armed struggle to secure it (Wilson, 1990: 72). The Southwest Africa People's Organization (SWAPO) gained a similar standing when South Africa repeatedly ignored the UN Security Council and General Assembly resolutions which proclaimed the Namibian territory to be illegally held and required South Africa to leave it. The PLO was not an anti-colonial group, but its experience suggests that it was treated as if it were one. First, a series of UN resolutions in the 1970s (both by the Security Council and the General Assembly) condemned not the PLO which was launching missile attacks against Israel from southern Lebanon, but Israel which was retaliating and in 1978 intervened in

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<sup>38</sup> The exception here would be the extreme Marxist groups that sprung up in the 1970s such as the German and Japanese Red Brigades and the faction around Carlos the Jackal. All of them have been eliminated by the joint effort of several states.

Lebanon asserting its right of self-defence under Article 51. Then, in 1979, the "terrorist" PLO was granted a UN observer status.

But these cases, where international society actually gave weight to claims of private armed groups over claims of states, have been extreme rarities. Most of the time when these groups operate across borders they are exposing themselves to cooperative efforts of states to repress them. As with transnational organized crime, states have in recent years stepped up also cooperation on suppressing private armed groups. The fact remains that a use of force by private groups *internationally*, both for political and non-political purposes, is not accepted by the society of states and is as such vigorously confronted.

## CONCLUSION

This study has argued that world politics is not presently moving towards some kind of neo-medieval order. It has also suggested that such *transformation would be possible only through the ashes of international society of states*. Neither legal nor behavioural facts hint that this society and its structure of distribution of political authority are less relevant than in the past. Stateless ethnonational groups in insurrection want, as 150 years ago, nothing else but to be part of it. IGOs for the most part do not have life independent of its members and when they do manage to have sway of their own, it certainly does not go against the international legal order. Global market agents and NGOs, despite all the appearances to the contrary, play within the rules of international society. Transnational drug cartels and mafiosi of all sorts do not play according to them, but they are not, nor do they pretend to be, after political rule and cannot, therefore, displace state authority. They are, moreover, together with private armed groups staunchly resisted by states. *Whatever is moving away from states, it is not their final authority.*

While this conclusion may come as a surprise to some, it should not be. We only have to look at entrenched and stable constitutional orders of some states to see how astoundingly hard it is to substitute them. It is easier to pass the proverbial camel through the needle's eye than to replace the constitutions of the U.S., Britain or Canada. In the last 350 years the world has moved, among others, from gunpowder to nuclear weapons, from printing press to the Internet and from the idea of absolutist monarchy to the idea of self-determination of peoples. Yet states still must not extend their domestic law beyond their borders, intervene militarily in other states without a legal basis to do so and be obligated without their consent. Those who write about the death of sovereignty do not rush to explain why this arrangement prevails – and why, in fact, the number of sovereign countries in the last half-century increased from 52 to around 190 today. They also do not explicate why within the geographical boundaries of international society the

number of entities not being part of it is historically negligible (present examples would be Taiwan and Northern Cyprus) and why they usually do not last long in this position (how possibly could the Soviet Union move from being a de facto state in the early 1930s to being the prime defender of international society only a decade later?).

Alexander Wendt and Raymond Duvall (1989: 58) opine that because IR theorists mostly forego inquiry into constitutive aspects of the international system, they are much too often prone to see it as a very fragile and politically problematic entity. This certainly applies to the neo-medievalists and their sympathizers. The thesis has contended that the jurisprudential approach goes right to the heart of constitutive realities because it tells us the structure of distribution of political authority and can identify its transformation. The framework of system transformation developed here is admittedly not razor sharp, though the question is whether much more precision is really possible. System transformations, as we saw with the medieval-to-modern example, can be highly complicated and uneven affairs. They may also be quite lengthy: it took some 150 years for the medieval system to transform and the seeds of this alteration were sown for centuries more. But the study hopefully increases our understanding of what transformational phenomena are and what *they are not*. The next phase in the research of this complex topic should follow the footsteps of Adam Watson (1992) and keep examining the transformation of historical systems, some of which this dissertation alluded to.

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