Sovereignty: An Introduction and Brief History
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Sovereignty:
An Introduction and Brief History[1]

Daniel Philpott

Most citizens of most states recall, in eulogy or in censure, a founding moment when battles, heroes, speeches, debates and compromises brought about a new constitution, an enduring new orthodoxy of political authority and principles. They speak of 1776, 1789 and 1917, of preserving the spirit of the revolution and the intentions of its founders. Rarely, though, do such sentiments apply to international relations. Occasionally scholars write of our "Westphalian system," but only cooly to categorize and chronicle, not to pronounce or polemicize. Why the reticence? It probably has much to do with the dominance of the realist tradition, according to which the history of international relations is an endless competition between armies and economies; rules, constitutions and notions of political authority, then, are only deceptive, forgettable surface reflections. I will argue for the reality of these reflections. International relations, too, has something akin to a constitution, embodied in what I will call "norms of sovereignty," and this constitution is formed through revolutions: Tumult yields novel orthodoxy.

Today sovereignty is again the issue. There is evidence that another revolution is afoot. Against the spirit of "the end of history," new actors are claiming new forms of authority. The European Union and the United Nations endorse the right to independence of secessionist Yugoslavian republics; the U.N. and its proxy armies intervene in Somalia, Iraq and Rwanda for humanitarian reasons and apply sanctions on Haiti on behalf of democracy, all without the consent of local parties; legal scholars note an "emerging right to democratic governance" which makes domestic government a matter of international concern; and E.U. states make new progress toward the "pooling" of authority in a common institution.[2] These

trends are still partial; whether they will become durable norms in the new world order is not yet certain. But if they do, together they will amount to one of the rare international revolutions in sovereignty since medieval times.

If the current relevance of the state is our question, then these emerging norms of sovereignty are noteworthy. They are not, however, all that is important to the state. Increased flows of trade, money, information and armaments, and changes in laws governing ownership and citizenship dramatically alter the state's functions and efficacy, but have little to do with sovereignty, which itself is purely a matter of legitimate authority. Although revolutions in norms of sovereignty are only part of important political change, they are an inestimably important part, and we ought to know something about their nature and history. I seek, then, to introduce sovereignty in two stages. First, I offer a sorely needed definition and explore some of its variations. I then offer a brief history of its crucial historical junctures and founding moments.

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International lawyers have so thoroughly delineated, demarcated, explicated, qualified and categorized sovereignty that the term's continued useful precision is open to question.[3] Yet, because sovereignty has so often been appealed to or claimed, in both polemics and preambles, by statespeople, diplomats and members of parliament concerned about the integrity of their authority, and because it comprises the struts and joists without which statecraft would not exist, it cannot be scuttled.

But sovereignty needs definition. Precisely because of its complex historical evolution, finding a definition encompassing every usage since

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Hoffmann, "Institutional Change in Europe in the 1980s," in *The New European Community: Decision making and Insitutional Change*, ed. Robert O. Keohane and Stanley Hoffmann (Boulder, CO: Westview Press, 1991) pp. 7-8.

[3] Lassa Oppenheim wrote in 1905 that it is "doubtful whether any single word has caused so much intellectual confusion," and Richard Falk has more recently suggested jettisoning the concept altogether. See L. Oppenheim, *International Law*, vol. 1 (London: Longman, 1905) p. 103, also quoted in Alan James, *Sovereign Statehood* (London: Allen & Unwin, 1986) p. 3; and Richard Falk, "Sovereignty," in *Oxford Companion to Politics of the World* (Oxford: Oxford University Press, 1993) p. 854.

the 13th century is a pipe dream.[4] However, there is a broad concept — not a definition, but a wide philosophical category — which unites most of sovereignty's past, and with which we can begin: authority. Authority is "the right to command and correlatively, the right to be obeyed."[5] It is legitimate when it is rooted in law, tradition, consent or divine command, and when those living under it generally endorse this notion. Legitimate authority is crucially different from power, which is raw, pure, physical and direct. Power, according to Steven Lukes, is exercised "when A affects B in a manner contrary to B's real interests."[6] Even at its most monarchical and dictatorial, even in the case of the absolute law-giving monarch of Jean Bodin or Thomas Hobbes, sovereignty is conferred by some notion of right which provides a basis for assent other than coercion.[7]

This is not to deny that sovereignty and power are related. If sovereignty is not mere power, neither is it mere legitimacy; it must not only have a basis in right, but also be practiced. A king or president must be able to carry out the essential duties of his office. A sovereign state must have uncontested control of its religion and its army, its economy and justice. When Shakespeare's Bolingbroke forced Richard II to abdicate, Richard had to admit the loss of sovereignty, the erosion of his divine royal mandate: "I find myself a traitor with the rest:/For I have given here my soul's consent/T'undeck the pompous body of a king;/Made glory base; and

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[4]   The oldest citation of "sovereignty" in the *Oxford English Dictionary* is dated 1290. See the second edition, prepared by J.A. Simpson and E.S.C. Weiner, volume XVI (Oxford: Clarendon Press, 1989) pp. 77-79.

[5]   R.P. Wolff, "The Conflict between Authority and Autonomy," in *Authority*, ed. Joseph Raz (Oxford: Basil Blackwell, 1990) p. 20. Here, I use legitimate in its descriptive sense not to mean justified or morally defensible, but as Max Weber meant it: Something is legitimate if it is assented to, or at least regarded as part of the normal, proper state of affairs. For Weber, authority attains its legitimacy either because it has tradition behind it, it has emotional power, it is rational or it is legal. See Max Weber, "The Theory of Social and Economic Organization," in *Max Weber: The Theory of Social and Economic Organization*, ed. Talcott Parsons (New York: The Free Press, 1947) pp. 124-32.

[6]   See Steven Lukes, *Power: A Radical View* (London: Macmillan, 1974) p. 34.

[7]   For Bodin, see Jean Bodin, *On Sovereignty*, ed. Julian Franklin (Cambridge: Cambridge University Press, 1992); for Hobbes, see Thomas Hobbes, *Leviathan*, ed. and intro. C.B. Macpherson (Harmondsworth, UK: Penguin, 1968) pp. 223-409.

355

sovereignty, a slave."[8] And although the Holy Roman Empire still existed and claimed prerogatives over states' internal policies after 1648, its authority was little more than parchment. Sovereign authority requires power to back up its legitimate claims. The obverse, it should be noted, is also true: Legitimacy, evoking allegiance and respect, can itself lend force to sovereign claims.

A sizable portion of a ruler's power, however, derives not from sovereignty's legitimacy, but from coarser factors. Due to both fate and ability, different U.S. presidents with precisely the same constitutional prerogatives have varied greatly in their power to pass laws through Congress, assert their will against the various U.S. states and make war on foreign countries. Internationally, one can imagine two small, equally sovereign states: one a "holder of the balance" arbitrating great powers' contests; the other uninfluential and buffeted in the world economy. While sovereignty is inestimably significant, the scope of power is much wider.

If sovereignty is not the same as power, neither is it synomymous with law. To Bodin and Hobbes, modern sovereignty's first systematic articulators, the legitimate sovereign was not only above human law, but the source of it. However, since the 18th century, this has changed. At first in the constitutionally advanced Western states, now virtually everywhere, human lawgivers are no longer legitimately sovereign. Instead, constitutions and international legal agreements define the scope of all rulers' and citizens' legitimate authority.

At this point, the definition is still too broad. A police chief, priest and corporate executive all have legitimate authority; rarely are they called sovereign. Sovereignty has always involved another ingredient: supremacy. In the chain of authority by which I look to a higher authority, who in turn looks to a higher one, the holder of sovereignty is highest. No one may question it or legitimately oppose it. Supremacy is certainly what Bodin and Hobbes had in mind, and it is at the heart of most subsequent definitions. A final necessary ingredient is territoriality. Sovereignty is authority within a discrete land, bounded by borders. Territoriality accompanies supremacy; and authority would not be supreme if there were challengers within its realm. As I discuss below, during the Middle Ages, when there was no sovereignty, every ruler both endured limits within his own territory and enjoyed some claims over the internal prerogatives of

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[8]   William Shakespeare, *King Richard II*, act 4, sc. 1, lines 248-51.

356

other rulers within Christendom. Territoriality is modern; it defines international relations.[9]

We have reached the limits of specificity: Sovereignty is *supreme legitimate authority within a territory*. All particular historical uses of the term have meant a particular form of supreme legitimate authority, reflecting one or another philosophy in a given epoch; sovereignty is never without an adjective. Three kinds of adjectives are relevant to understanding sovereignty's variants. The first describes holders of sovereignty, who may be diverse. Sovereignty need not lie in a single individual, but could also reside in a triumvirate, a Committee of Public Safety, the people (in Rousseau's version) or a body of law. In most modern states, a constitution prescribing the authority of political offices is sovereign, while over some matters, international law or E.U. law may also be sovereign. The legitimate holders of sovereignty have, of course, changed over time. Indeed, on one reading, modern political philosophy has been a debate about who holds sovereignty.

Another relevant pair of adjectives is "internal" and "external," which are not distinct types of sovereignty, but complementary, always coexistent, aspects of sovereignty. Supreme authority within a territory implies both undisputed supremacy over the land's inhabitants and independence from unwanted intervention by an outside authority — a church, an empire, another state or a United Nations. It is to the external aspect of sovereignty that modern international legal scholars and political scientists refer.[10] In a broader historical perspective, however, in which the state becomes the legitimate polity at Westphalia or colonies attain independence in the 20th century, both internal and external sovereignty are at issue.

Sovereignty may finally be divided into absolute and non-absolute. This may at first seem an odd distinction. If sovereign authority is supreme, how can it be less than absolute? Absoluteness, though, does not refer to the quality or magnitude of sovereignty, for if sovereignty were less than

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[9] A good account of the role of territoriality can be found in John G. Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization*, 47, no. 1 (Winter 1993) pp. 139-74.

[10] Probably the most helpful discussion of the meaning of sovereignty, one on which I have drawn, is in Alan James, *Sovereign Statehood* (London: Allen & Unwin, 1986). Our two approaches are not identical.

357

supreme in any particular matter, it would not be sovereignty at all. But a sovereign need not be sovereign over all matters. Absoluteness refers to the scope of affairs over which a sovereign body governs within a particular territory. Is it supreme over all matters or merely some? In those matters to which a sovereign body's authority does not extend, it is typically the international law or institution prescribing how authority is to be shared that is sovereign. The government of France is supreme in foreign policy but not in trade, which it governs jointly with the other E.U. members as prescribed by E.U. law. The French government's sovereignty is non-absolute. For Bodin and Hobbes, by contrast, sovereignty meant authority over all matters; it was absolute, unconditionally.[11] Absolute sovereignty is archetypical modern sovereignty. It is the norm to which the E.U. and humanitarian intervention are two exceptions. It renders international relations anarchical, for it makes states wholly autonomous; they are not required to yield or genuflect to any outside authority. It is the sort of sovereignty with which we are most familiar.

Now, I have said that international relations has a constitution, and yet sovereignty thus far defined deals only with the authority of specific states, whereas an international constitution governs the authority of several states in a system, or even every state on the globe. Such a constitution consists of "norms of sovereignty," commonly agreed-upon rules that define the holders of sovereignty and their prerogatives. Norms of sovereignty answer three questions, which we may think of as the three "faces" of sovereignty. First, who are the legitimate polities in international politics? States? The Holy Roman Empire? The European Union? Second, who is entitled to become one? If states are legitimate, who may become one? Nations that currently have no state of their own? What about colonies? Third, what essential prerogatives in making and enforcing decisions do the legitimate polities enjoy? Are states free from all intervention, or are there some matters in which they are subject to interference?[12]

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[11] In fact, this must be somewhat qualified even in the case of Bodin, for whom the sovereign is bound by the natural law, has a duty to respect the liberty and property of subjects who are entitled to these and is obligated to abide by his contracts with private citizens. None of these duties, however, gives rise to a right to resistance. See Bodin, *On Sovereignty*, and J.H. Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973).

[12] Norms of sovereignty, then, are both "constitutive," defining the basic players without which the game would not exist, and "regulative," specifying the rules that the players must follow. This oft-cited distinction between "constitutive" and "regulative" rules was first formulated by John Rawls in "Two Concepts of Rules," *Philosophical Review*, 64 (1955) pp. 3-32.

As the constitution of international relations, norms of sovereignty, like sovereignty itself, are both legitimate and practiced. Legitimacy is important to the idea of a norm, for it implies that polities acknowledge norms as basic rules, not just coincident interests. Usually, legitimate norms are ones that are codified in a treaty, a covenant or a charter. Always, they are generally perceived as right, or at least as the "normal" expected state of affairs. A violation of the norm by one state would be seen by other states not just as hostile policy, but as a breach of rules which they all value. During the Westphalian era, when state sovereignty was sacrosanct, if France were to attack Austria on account of Austria's encroachment in Italy or Germany, France would be hostile but not a violator of norms. If France were to intervene in Austria to counter creeping Protestantism or install a liberal democracy, it would violate the legitimate rules of the game.

But norms must also be generally practiced or adhered to, otherwise it would mean very little that they are a constitution. Attendant upon the norm of decolonization was the actual freeing of colonies; similarly, following the Peace of Westphalia, states only rarely forcibly interfered in the religious affairs of other states. This does not rule out occasional violations or anomalies — not all colonies gained immediate independence as soon as colonialism became illegitimate in the 1960s. Indeed, the most important difference between domestic constitutions and international constitutions is that in the domestic realm, one expects the regular enforcement of law, whereas in the international realm, violators often go unpunished. But the international norm must be generally obeyed, at least by all those who have the power to violate it; that some colonies were exceptions, and for the most part became independent within a decade, allows us to say that a norm of decolonization existed from the early 1960s.

If, however, there exists a rogue or revisionist state that both rejects a norm and has the power to and does overturn it or constantly violate it, then the norm does not in fact exist — it is not practiced. A rogue state must be a powerful state, one that can effectively prevent the norm's practice or force other states to fight to preserve it. A historical period in which such a state exists is one of "contested norms," meaning not that the old norm has been replaced by a new one, but that no norm at all elicits general support. Although the 1555 Treaty of Augsburg prescribed Westphalian state sovereignty in Germany, neither Catholic nor Protestant powers accepted its terms, and in fact continued to invade one another's religious privacy. Only after 1648 was the Augsburg formula accepted, respected

and practiced. Although the Pope condemned the settlement, he could do nothing to oppose it in an age in which Stalin would ask, "How many divisions has the Pope?"

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We can read the essential character of any era in international relations through its norms of sovereignty. Since new norms of sovereignty are to the history of international relations what the founding of new republics and empires is to the history of France or the Constitutional Convention is to the history of the United States, it is worthwhile to look at these founding moments, these revolutions in sovereignty, and ask what sort of orders they have created.[13]

Before the 1648 Peace of Westphalia, the first modern revolution in sovereignty, there was no sovereignty; no legitimate authority was supreme within its territory. The previous era, the Middle Ages, can best be described by the Pauline metaphor of the Body of Christ, which was used by contemporary publicists, philosophers, theologians and holders of power to describe their political and social world. All believers in the true faith were members of a single organism in which each individual found his definition, identity and purpose, where all lived in common under the same law and morals and where none was severed or independent in his authority or beliefs. Yet not all were equal parts of this organism in purpose and role, but like the parts of the body were arranged in an inclusive division of labor, a complex hierarchy with the pope and emperor at the head, with kings, barons, bishops, dukes, counts and peasants each in their proper place, all connected by the most labyrinthine ligaments of privilege and prerogative. Thus was society held together, just as the Church is united in the Body of Christ.[14]

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[13] My account is admittedly modern and focused on Europe. I limit it thus for the reason that I seek to show the origins of our modern system, which properly began in the Middle Ages. For an excellent study of state systems at various times and places, see Martin Wight, *Systems of States* (Leicester, UK: Leicester University Press, 1977).

[14] Good descriptions of authority in the Middle Ages can be found in Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1957); Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy With Augustinus Triumphus and the Publicists* (Cambridge: Cambridge University Press, 1964); W. Ullmann, *Principles of Government and Politics in the Middle Ages* (London: Methuen, 1961); W. Ullmann, "Reflections on the Medieval Empire," in *Transactions of the Royal Historical Society*, Fifth Series, Volume 14 (London: Offices of the Royal Historical Society, 1964); John Neville Figgis, *The Divine Right of Kings*, intro. G.R. Elton (New York:

The body metaphor describes the archetypical medieval world between the 11th and 13th centuries. It is the world that Thomas Aquinas depicted, and the world that temporal and ecclesiastical authorities inhabited, even if they did not like all of its terms. Now whether or not this *corpus mysticum*, this *Res Publica Christiana*, was true to the ideal, whether or not actual patterns of authority fit the world described by its most eloquent chroniclers, is the subject of much debate, which I cannot cover here.[15] But it is clear that in the Middle Ages, nobody was sovereign. Certainly there were papists who construed the pope as sovereign, possessing *plenitudo potestatus*, and Dante and Marsilius of Padua wanted the emperor to be sovereign, but such ideals lingered as fantasy. Both the pope and the emperor intervened regularly in the territorial affairs of kings, nobles and of course, bishops and other ecclesiasts, but there were limits to this intervention. The same kings, nobles and ecclesiasts held prerogatives against the pope, the emperor and each other, prerogatives that were local and feudal, disconnected from any law empowering the pope or emperor. Nor was the natural law sovereign: While it was a universal moral standard enforced and interpreted by the pope and ecclesiastical courts, it did not prescribe offices or powers, rights or judicial procedures, in the way that a sovereign body of law such as the U.S. Constitution does. The norm of sovereignty was, to the degree that it can be distilled, simply the lack of sovereignty, or what political scientist John Ruggie calls "heteronomy."[16]

Harper Torchbooks, 1970); and Otto Gierke, *Political Theories of The Middle Age*, trans. and intro. Frederic William Maitland (Cambridge: Cambridge University Press, 1958).

[15] In a recent article, Markus Fischer claims that in several important respects, politics in the Middle Ages were not different than in a sovereign state system. See Markus Fischer, "Feudal Europe, 800-1300: Communal Discourse and Conflictual Practices," *International Organization*, 46, no. 2 (Spring 1992) pp. 427-67. It is true that Europe during pockets of the Middle Ages resembled a system of sovereign states. Medievalist George Duby's study of the twelfth century Mâconnais region of southern France reveals a constant struggle between castellanies who were equivalent in their function and authority, and seemed to heed no higher authority. Yet during most of the Middle Ages, vassals and lord did honor reciprocal obligations, and beyond the manor, the pope and the emperor were able to press strong claims. See Georges Duby, *La société aux XIe et XIIe siècles dans la région mâconnaise* (Paris: Ecole Pratique des Hautes Etudes, 1982).

[16] See John G. Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis," in *Neorealism and its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986) pp. 131-58. Ruggie writes, "The modern system is distinguished from the medieval not by the 'sameness' or 'difference' of units, but by *the principles on the basis of which the constituent units are separated* from one another" (p. 142, italics Ruggie's). Ruggie demonstrates that medieval notions of property and authority were wholly different from modern ones.

With the absence of sovereignty went a few other quintessentially medieval features. For instance, political authorities were differentiated in their function and set of obligations. Thousands of magnates, monsignors, nobles, lords, bishops, counts, kings and knights were related through obligations, both feudal and familial, that had behind them pedigrees formed by generations of wars, marriages and successfully argued legal claims. No two authorities were alike. That church officials were among the relevant authorities points to another defining trait: the inextricability of religion and politics. Especially between the reigns of Gregory VII, elected in 1073, and Innocent IV of the mid-thirteenth century, the pope was executive, judge and legislator. He could guarantee treaties, devise principles governing war, abrogate any law opposed to the natural law and mediate wars. All the way down the hierarchical ladder, the Church exercised authority that was, by any modern definition, civil. Finally, the realm of Christendom enjoyed moral and legal unity. Although nobody was sovereign within this realm, natural law obligated all of the faithful, and everybody was tied to someone else by some sort of legal bond.

Much of this medieval world had disappeared by the early 16th century. By then, Britain, France and Sweden all looked very much like sovereign states, while princes in Germany and the Netherlands enjoyed many of sovereignty's prerogatives. In Italy, roughly between the Council of Constance in 1415 and the sack of Rome in 1527, there was even a system of sovereign states, independent from the rest of Europe. Yet the Italian system did not persist. It was subsumed by its French and Spanish conquerors into the European system, and this European system was not yet one of sovereign states.[17] Still redoubtable in much of the continent was the Holy Roman Empire, the last medieval entity, venerated for its pedigree, persistent in its authority, but neither preeminent nor ultimate nor supreme in any particular territory. In its shadow were German, Dutch and Italian princes who were under the authority of the emperor and pope, yet enjoyed ancient liberties that neither could challenge, along with almost totally independent cities and countless other entities with variegated portfolios of powers. Arcane lines of authority were the norm; idiosyncrasy was the only regularity.

In one matter in particular, the emperors of the 16th century would not tolerate autonomy within their lands: Dissent from the true faith of the true Church was strictly prohibited. At first, the emperor's policies seemed

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[17]   On the nature and dates of the Italian system, see Martin Wight, *Systems of States*.

defeated and sovereignty victorious. The 1555 Peace of Augsburg, whose terms included the famous formula *cuius regio, euis religio* ("whose the region, his the religion"), allowed German princes to enforce their own religion, Catholic or Protestant, within their own territory. For the princes, this meant sovereignty — it would complete their portfolio of authority. Yet Augsburg did not last. As a norm of sovereignty, it was not practiced. The Treaty's endless clauses and mutual dissatisfaction with it ensured that when a dispute arose, Catholics' and Protestants' mutual enmity, fueled at the time by the Counter Reformation, would result in war. Battles and skirmishes arose in the 1580s and continued on and off, through truces and outbreaks, eventually expanding into the holy cataclysm of the Thirty Years' War. Not until the close of this war in 1648 was something like *cuius regio, euis religio* accepted, respected and practiced.

What, then, was this Peace of Westphalia? How did its component Treaties of Münster and Osnabrück end Christendom and elevate the sovereign state? In the minds of the victorious French and Swedish diplomats, the settlement quite distinctly embodied a system of sovereign states. There is ample evidence for this in the writings of Cardinal Richelieu, while the Swedish king, Gustavus Adolphus, is rumored to have toted Grotius' writings in his saddlebag.[18] Apart from those who conceived this grand design, all of the victors — France, Sweden, the Netherlands and Germany — sought the detailed substance of sovereignty, provisions that would free princes from all imperial control.

But a norm of sovereignty is more than a subjective inclination, and in several respects, the provisions of Westphalia indeed made sovereign statehood a norm, legitimate and practiced. Whereas it did not formally dissolve the Empire, Westphalia gave princes the power to make alliances — allowing them the freedom of action outside their borders that is crucial to external sovereignty. Westphalia solidified *cuius regio, euis religio* as well. Although some restrictions on the practice of religion within certain realms were included, neither emperor nor pope nor outside states would intervene forcefully in the religious affairs of a European state for centuries afterward, just as none would ever again pose a threat to German princes'

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[18] Hedley Bull, "The Importance of Grotius in the Study of International Relations," in *Hugo Grotius and International Relations*, ed. Hedley Bull, Benedict Kingsbury and Adam Roberts (Oxford: Clarendon Press, 1990) p. 75.

363

power to make alliances.[19] The settlement also created new sovereign states, the United Provinces and the Swiss Confederation. Complementing all of these trends, the treaties explicitly curtailed the powers of the Empire and Papacy — those that still existed were bereft of efficacy. Fittingly, Pope Innocent X issued a bull, *Zel Domus*, calling the treaties "null, void, invalid, iniquitous, unjust, damnable, reprobate, inane, empty of meaning and effect for all time," and as late as 1900, popes still censured international law as a Protestant science, refusing to remove Grotius' *De Jure Belli ac Pacis* from the *Index* of banned books.[20]

Westphalia set new standards for each of sovereignty's three faces. It made the sovereign state the legitimate political unit. It implied that basic attributes of statehood such as the existence of a government with control of its territory were now, along with Christianity, the criteria for becoming a state. Finally, as it came to be practiced, the Treaty removed all legitimate restrictions on a state's activities within its territory.

A few qualifications are in order. First, sovereign statehood was limited to Europe, excluding the Ottoman Empire. Christendom was still a qualification for membership, if not a source of obligation for states in their internal affairs. There are also some bugs in the view that Westphalia was a complete break. A few anomalous imperial practices persisted after 1648, and many elements of the system of sovereign states had appeared much earlier than Westphalia. But the anomalies were just that — traces of the past. As for Westphalia's novelty, I would not argue that the peace created a system of sovereign states *ex nihilo*, but rather that it consolidated 300 years of evolution toward such a system.[21]

A change in norms of sovereignty of this magnitude would not recur for another 300 years. The only wholesale challenge to the Westphalian

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[19] Below, I discuss the emergence of protection of religious minorities as a qualification for statehood in the 19th century.

[20] The quote is from David Maland, *Europe in the Seventeenth Century* (London: Macmillan, 1966) p. 161. On the pope and the banning of Grotius, see Bull, Kingsbury and Roberts, eds., *Hugo Grotius and International Relations*, pp. 65-94.

[21] A contrasting argument, claiming that Westphalia was not a decisive break between the medieval and modern worlds, can be found in Stephen Krasner, "Westphalia and All That," in *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, ed. Judith Goldstein and Robert O. Keohane (Ithaca, NY: Cornell University Press, 1993) pp. 235-64. The view that Westphalia was a consolidation of the evolution toward a system of sovereign states may be found in Martin Wight, *Systems of States* and Charles Tilly, *Coercion, Capital, and European States, AD 990-1992* (Oxford: Basil Blackwell, 1990) p. 167.

norm — to all three of its faces — before the 20th century was Napoleon's ultimately failed attempt to eradicate Europe's *anciens régimes* and replace them with some sort of empire. Yet important changes did occur with respect to sovereignty's second and third faces: criteria for membership and the prerogatives of states. In the 19th century, two different kinds of norms of sovereignty came to be demanded: minority rights guarantees and national self-determination, which is simply any legal arrangement that accords a nation within a state greater autonomy. That every nation should have its own state is only the most extreme form of self-determination; other types include limited autonomy within a federal arrangement or merely certain rights or protections for a group within a state. Both norms aspired to be conditions for becoming states. Minority rights treaties would impose conditions on new entrants to the European system and national self-determination would give captive nations the right to become states.

When, if ever, were these norms achieved? National self-determination was first advocated during the French Revolution. After the bedlam died down, however, conservative monarchs rejected this idea, and they hardly considered a general guarantee of minority rights.[22] Later in the century, Europe's great powers began to change their view. Britain, France and Russia granted independence to Greece in an 1830 protocol on the condition that it protect the religious rights of Turks, while in the 1856 Treaty of Paris, the Powers mandated similar conditions on behalf of Moldavia and Wallachia. But it was not until the 1878 Treaty of Berlin that minority protection came to be a normal condition placed on new states.[23]

It is commonly thought that national self-determination finally triumphed in the settlement of the First World War under the avuncular sponsorship of Woodrow Wilson and at the eager behest of freshly

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[22] An exception to this was Poland, which was given limited rights of self-government despite remaining within the territories of larger powers. Inis Claude calls this "[t]he first explicit recognition and international guarantee of the rights of *national* minorities," in *National Minorities: An International Problem* (Cambridge: Harvard University Press, 1955) p. 7.

[23] The 1878 treaty attached such conditions to the statehood applications of Rumania, Serbia and Montenegro, along with similar clauses on Turkey, which had already attained sovereignty. Although minorities were still persecuted, most blaringly the Armenians, whom the Turks massacred in 1896, the great powers nevertheless continued to regard as legitimate the formula of Berlin; it was a norm of sovereignty. Through the beginning of the First World War, they intervened on several occasions to enforce these provisions, and signed several bilateral treaties patterned on 1878. On these issues, see Inis Claude, *National Minorities*; Raymond Pearson, *National Minorities in Eastern Europe 1848-1945* (London: Macmillan Press, 1983) and C.A. Macartney, *National States and National Minorities* (New York: Russell and Russell, 1968).

liberated Eastern European nations. In fact, no lasting norm emerged. National self-determination cannot be found in the League Covenant, and the League's International Commission of Jurists confirmed its illegitimacy in its 1920 ruling that the Aaland Islands could not secede from Finland to join Sweden. Several provisions to protect minorities, however, were included. With both the defeated states — Austria, Hungary, Bulgaria and Turkey — and the new or enlarged states — including Poland, Czechoslovakia, Yugoslavia, Rumania and Greece — the victorious allies signed treaties that guaranteed the rights of minorities. The League of Nations Covenant also included a provision to guarantee the rights of "racial, religious or linguistic minorities" that would be enforced through a judicial arbitration system.[24] In addition to providing a criterion for statehood, the treaty system's regular monitoring function restricted state sovereignty, at least until Hitler doomed its prospects.

Later in the century, in a different locale and in a different context, self-determination would finally win acceptance. In 1960, the U.N. pronounced colonies illegitimate: "All peoples have the right to self-determination" and "inadequacy of political, economic and social and educational preparedness should never serve as a pretext for delaying independence." Colonialism was condemned as "alien subjugation, domination and exploitation ... a denial of fundamental human rights."[25] And in roughly the decade surrounding 1960, Britain and France granted independence to most of their remaining colonies. As with Westphalia, the transition was not divinely neat. Some colonies had already been freed and others would trickle into independence during the next two decades. But in the thoughts, words and deeds of the U.N. and the vast majority of states, including the colonial powers, it was now illegitimate for a state to have governing authority over a colony.

Self-determination, however, had its limits. Only colonies were entitled to statehood, not nations or tribes either within colonies or within other states. Colonies became states, modern and Westphalian, and the norm of sovereign statehood was globally extended. Previously, sovereign statehood had only been enjoyed by European states, and gradually, by some states in other parts of the globe. At the Berlin Conference in 1885, European powers set a "standard of civilization" dividing the world into civilized European states and barbarian peoples who could not participate

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[24] See Inis Claude, *National Minorities*, pp. 16-28.

[25] General Assembly resolution 1514 (XV), 14 December 1960.

366

as equal law-abiding members of the international community until they had learned the art of governing. At the end of the First World War, the European powers retained the standard, although they created a mandate system making it possible for some of the more advanced colonies to advance toward independence under colonial "stewardship" — a provision that amounted to little more than a vague promise of greater future autonomy.[26] At the end of the Second World War, Britain and France, though militarily and economically weakened, decided to retain their colonies as well as the tutelary justification for keeping them. Even though the U.N. Charter endorsed self-determination, Article 73 held that regions not ready for self-government would be treated as a "sacred trust." Only 15 years later would the globe become Westphalian.

The first transition since Westphalia to challenge all three faces of sovereignty has been the creation and expansion of the European Community, now the European Union. For the first time since the demise of the Holy Roman Empire, a significant political authority other than the state, one with formal sovereign prerogatives, has become legitimate. The E.U. has definite criteria for membership, including a well-defined regimen for application, along with a constitution that carefully accords prerogatives to both member states and the E.U. bureaucracy itself. E.U. law is still sovereign only in a limited number of areas, but member states are no longer sovereign in all areas; neither body enjoys absolute sovereignty. Over four decades, the sovereignty of each has changed in content. In 1950, the European Coal and Steel Community was created, and included France, Germany, Italy, Belgium, the Netherlands and Luxembourg. The 1957 Treaty of Rome created the European Economic Community, a common market with institutions to govern trade and regulate diverse sorts of commerce. In 1985, the Single European Act expanded the common market and rendered many areas of policy governable by a qualified majority, rather than allowing every member a veto, thus strengthening the institution's formal powers. And in 1991 the Maastricht Treaty set as goals a common currency, the further integration of monetary policy and the development of a common foreign policy, although it is still not clear to what extent these will be realized.

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[26] Under the general principle of self-determination, Article 22 of the League Covenant prescribed a mandate system in which colonies were to be held under "a sacred trust of civilization," and divided them into categories A, B and C according to their level of development and prospect of becoming viable independent states. On the history of the mandate system, see Quincy Wright, *Mandates Under the League of Nations* (Chicago: University of Chicago Press, 1930).

367

While the European Union is placing larger numbers of people under the authority of an institution other than the state, the emergence of a nascent norm allowing U.N.-sanctioned intervention for humanitarian purposes actually gives individuals and peoples legitimate claims against state institutions, although these are only exercised in extreme disasters. The sovereignty of the state is becoming less than absolute, the Westphalian paradigm is being weakened and the state is again, at least to some degree, problematic.

As I mentioned above, norms of sovereignty are not all that is important in assessing the enduring relevance of the state; many other trends are consequential. Some of these, including treaties and agreements governing trade, armaments and thousands of technical minutiae, restrict the state's legal freedom of action, but do not alter norms of sovereignty. The content of the state's obligations may change, but the basic authorities who agree to these obligations, who make, monitor and enforce policy, do not change. Analogously, the laws that exist in a domestic polity may change without its constitution changing. Other trends such as growing economic interdependence affect a state's power but are not necessarily accompanied by legal changes, just as a state may undergo vast economic changes that have little to do with its laws. Norms of sovereignty are not solely matters of legal freedom of action but also of basic authority. They are not solely matters of power, but also of legitimate authority. Revolutions in these norms are rare, but they are revolutions of the most basic sort.

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368