

# Was Westphalia ‘all that’? Hobbes, Bellarmine, and the norm of non-intervention

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**Abstract:** Recently, historians of the international system have called into question the significance of the Treaties of Westphalia in 1648 as the moment when the international system formed. One of their primary arguments is that the non-intervention norm typically associated with Westphalian notions of sovereignty developed much later. This paper will examine the early 17th-century debates over the right of the Pope to depose monarchs in the defense of spiritual matters. I read Part III and Part IV of Hobbes’ *Leviathan* in its intellectual context to see how his theory of sovereignty was partially developed to support a theory of non-intervention. This reading leads to two important contributions to current political science debates. First, it refutes the growing consensus that non-intervention developed as an aspect of sovereignty only in the late 18th and early 19th century. Second, the paper addresses current attempts to assert a right of humanitarian intervention. By exploring similarities between these recent debates and those between Bellarmine and Hobbes in the 17th century, I offer a fresh perspective on what is at stake in current claims to international community.

**Keywords:** sovereignty; non-intervention; Westphalia; Hobbes; Bellarmine

A commonly asserted premise in international relations scholarship is that the modern state system began in 1648 (van Crevelde 1999: 86; Jackson 2007: 50). This date is used as a signpost because it is when the Thirty Years War ended, and the treaties signed in the towns of Münster and Osnabrück in the region of Westphalia recognized the principle of *rex est imperator in regno suo* – each king is an emperor in his own realm. The treaty effectively ended the Holy Roman Empire’s claim to be a trans-European Christian polity. One consequence of this was to eliminate the authority of the Pope to intervene in domestic political affairs of the newly autonomous principalities. Pope Innocent X famously responded to the Westphalia Treaty by stating that it was ‘null, void, invalid, iniquitous, unjust, damnable, reprobate, inane, and devoid of meaning for all time’ (Jackson 2007: 52).

The Catholic Church saw the peace treaties of Westphalia as a usurpation of its political authority.

International relations scholars have interpreted the Treaty of Westphalia as a ratchet point in history – a moment when the structure of society changed in such a fundamental way that there was no going back. As the story goes, before Westphalia, Europe was a complicated, overlapping network of multiple political authorities, none of which had a monopoly on political power. After Westphalia, states in Europe were autonomous sovereignty entities with exclusive control over their territories, and a right to not have interference in their domestic affairs by foreign powers (Jackson 2007: chap. 3; van Creveld 1999: chap. 2; Philpott 2001).

Of course, anyone who has taken an introductory history course will realize that in practice history is not so neat. Large social changes such as the displacement of medieval Europe's feudal system with a system of sovereign states did not happen overnight. In the last 20 years, a number of international relations scholars have engaged in more nuanced readings of the origins of the state system, and in so doing the significance of the Westphalian moment has been considerably complicated. One significant focus of this historical revision has been on the question of the principle of non-intervention. In the conventional reading of Westphalia, the argument has been that what makes states sovereign – at least with respect to the international system – is the principle of non-intervention. Robert Jackson argues that 'The *grundnorm* of such a political arrangement (sovereign statehood) is the basic prohibition against foreign intervention which simultaneously imposes a duty of forbearance and confers a right of independence on all statesmen' (Jackson 1990: 6). While Jackson concedes that the participants at the peace treaty talks in Westphalia did not see themselves as inventing a modern state system, 'Westphalia is an important staging post, perhaps the most important, in a long retreat that lasted over several centuries during which time *respublica Christiana* was obliged to surrender more and more authority to the emergent states of Europe' (Jackson 2007: 51).

Other scholars have challenged the significance of Westphalia in the rise of the modern state system. Stephen Krasner has penned an essay entitled 'Westphalia and all that,' which challenges the notion that the treaty of Westphalia established the international state system (Krasner 1993). And, in *Sovereignty: Organized Hypocrisy* he has argued that, 'The norm of nonintervention in internal affairs had virtually nothing to do with the Peace of Westphalia, which was signed in 1648. It was not clearly articulated until the end of the eighteenth century' (Krasner 1999: 20). In her historical study of the transformation of norms of intervention, Martha Finnemore observes that 'military intervention, by its nature, involves violation of a

foundational principle of international law (sovereignty)' (Finnemore 2003: 6). While she had intended to trace the norms of military intervention back to the 17th century, in her research she 'discovered that the participants recognized no such thing. There was plenty of military activity across borders to change rulers in this period, but people called it war' (Finnemore 2003: 10). So, like Krasner, Finnemore contends that the bundling of sovereignty with the principle of non-intervention did not take place until the late 18th or early 19th century. Conversely, in his book *The Myth of 1648*, Benno Teschke argues that '1648, far from signaling a breakthrough to modern inter-state relations, was the culmination of the epoch of absolutist state formation' (Teschke 2003: 3). Therefore, he places the rise of the sovereign state as earlier than 1648.

The upshot of all of this revisionism with respect to the rise of the state system has been to provide scholars with a more nuanced understanding of when and how the modern state emerged. The claim that the modern state was born with the signing of the peace treaties of Westphalia in 1648 was anachronistic. Certainly the participants to that event did not see themselves as creating a new political entity called 'the state'. Nor did they perceive themselves as developing new international legal principles of sovereignty and nonintervention. These revisionists have been helpful in fleshing out the details of how the modern state developed, and charting its gradual emergence from the late Middle Ages to the industrial era. And yet, in doing this one of the central claims that these scholars have advanced is that principles of non-intervention associated with sovereignty only emerged long after the treaties of Westphalia, in the late 18th century. Onuf and Krasner cite Vattel and Wolff as the political philosophers who first equated non-intervention with state sovereignty (Onuf 1991, 1994; Krasner 1993, 1999). And so a curious thing has happened in scholarship about the development of state sovereignty: while the social and political history has moved away from emphasizing the significance of fixed dates as markers for the precise moment of historical change, the very same scholars act as if ideas suddenly emerged in the minds of great thinkers at precise moments in history.

What I propose to do in this article is treat the development of sovereignty not as a fixed moment or idea, but as the result of an ideological struggle. In doing this, I will argue that late 16th- and early 17th-century debates over the deposing power of monarchs were a constitutive element in our modern concept of sovereignty. These debates focused on whether or not the Pope had the right to overthrow European monarchs who had violated divine law. Defenders of the Pope such as Suárez, Vitoria, and Bellarmine saw themselves as defending a pan-European Christian order. In this order, the spiritual authority of the Church was intertwined with the

temporal authority exercised by monarchs. Sovereignty referred to supreme authority, and from this theological perspective only God could be sovereign. For Bellarmine the question of the Pope's deposing power only arose in those instances where there was a dispute over the jurisdiction of papal and monarchical authority. He saw himself as laying out the legal principles according to which such disputes could be resolved. The supporters of European monarchs saw matters quite differently. Allowing the Pope to assert a deposing power would undermine the authority of monarchies, and could (and on occasion did) foment civil war. As such, external powers could not be permitted to exercise any authority within a state. The monarch was sovereign, and a core feature of sovereignty was that the monarch was the final authority on all matters, be they religious or temporal.

To illustrate this, I will consider the writings of Bellarmine and Hobbes in their historical contexts. As we shall see below, neither Bellarmine nor Hobbes developed these respective positions on their own. Much of what they had to say on the matter of papal deposing power had already been said by others. But each of these writers is representative of their respective positions, and what they did say on the matter, they said clearly and forcefully. In studying their respective texts on sovereignty and papal deposing power I hope to demonstrate that while Westphalia was not *the moment* that sovereignty emerged, the various ideological and political struggles in the 17th century between the Pope and European monarchs did produce our modern theory of state sovereignty, a theory that includes the principle of non-intervention as one of its constitutive features. As such, this article will be of benefit to the emerging field of global constitutionalism. Constitutionalism analyzes the role of fundamental norms, the types of actors, and the institutions and procedures through which legal and political decisions are made. In recent years, scholars of European integration and international politics have applied the concept of constitutionalism to the analysis of politics above the state (Maduro 2003; Tully 2008; Wiener 2008; Kumm 2009; Lang 2009). One central insight of this area of research is that the meaning of international norms and institutions is determined by their meaning-in-use and the changes in practices in global politics. As such, the norms and rules of global constitutionalism are produced through the political contestation and struggle between different actors in different political contexts. One fundamental norm of international politics is sovereignty. And one fundamental component of sovereignty is the principle of non-intervention in a state's domestic affairs. In recent decades, debates about the legality of international military interventions in civil wars or for the purpose of preventing genocide or other atrocities has led to a debate about where and when it is acceptable for forces from outside a state to intervene in a

state's internal affairs. From a global constitutionalist perspective, these debates represent a contemporary struggle over the meaning-in-use of the norm of sovereign non-intervention. As such, studying an earlier episode in the history of this norm will help current scholars of global constitutionalism have a deeper understanding of what is involved in the principle of non-intervention, and how proposed changes to the norm of sovereignty such as the Responsibility to Protect doctrine raise important questions about international authority and judgment that current debates tend to ignore.

The essay proceeds in three parts. In the first section I analyze the arguments in support of papal deposing power by considering the arguments of Cardinal Bellarmine. In the second section, I look at the arguments against papal deposing power as presented by Thomas Hobbes in parts III and IV of *Leviathan*. In the third section I briefly consider the significance of this 17th-century debate over sovereignty and deposing power for contemporary debates over humanitarian intervention.

### Bellarmino and papal deposing powers

In the late 16th and early 17th century there were a number of disputes between European monarchs and the Pope. In many of these disputes a central claim of Catholic theologians and their supporters was that the Pope had the right to intervene in the affairs of states and depose heretical princes. In 1538 Pope Paul III excommunicated Henry VIII of England for divorcing Catherine of Aragon and establishing the Church of England. Elizabeth I was excommunicated in 1570 by Pope Pius V, who argued that Mary Queen of Scots was the legitimate monarch of England. In 1585 Pope Sixtus V excommunicated Henry of Navarre in order to prevent Henry – who was Protestant – from ascending to the throne of France. In 1606 and 1607 Pope Paul V issued two breves that condemned King James I of England for implementing an Oath of Allegiance for Catholic subjects (Sommerville 1994: xxx). And from 1606 to 1607 Venice was placed under an interdict by Pope Paul V for passing laws that seized church property and placing members of the clergy on trial in the city's courts rather than turning them over to the Church for trial in the ecclesiastical courts (Lievsey 1973: 11–19). These disputes led to the publications of numerous treatises and pamphlets that debated the extent of the Pope's powers to interfere in the affairs of states. Defenders of the Catholic Church argued that the Pope had the right to depose monarchs if those secular rulers' actions undermined a core aspect of Christian theology. Some defenders of papal power went so far as to argue that subjects had a right to resist and overthrow monarchs who had been excommunicated by the Pope.

The central figure in the defense of the power of papal intervention was Cardinal Robert Bellarmine (1542–1621). Bellarmine was an Italian Jesuit Cardinal and the leading theologian of the Catholic Church's Counter-Reformation. He taught at the Collegio Romano 1576–1587 where he primarily lectured on refuting Protestant heresies. His major work, *Controversiae Christianae fidei adversus huius temporis haereticos* was a summation of his lectures while at the Collegio Romano (Godman 2000: 57). It was published in three installments in 1585, 1588, and 1593 and addresses Christology, ecclesiology, the sacraments, and the politics of the papacy and church councils. His discussion of the political power of the Pope was contained in the first volume of the third *Controversiae*, entitled *De Summo Pontifice* or *The Supreme Pontiff* in English. His concern in this text was to assert the exact nature of the Pope's political power with respect to the secular authority of princes. During the 16th century this issue had been raised in the political-theological writings of Calvin and his followers as well as in the legal opinions of the defenders of Protestant monarchs such as Henry VIII and Elizabeth I of England and Henry of Navarre. The central question in these early debates was over the nature and power of the Pope with respect to these Protestant monarchs. The Pope and his supporters maintained that the Pope had the power to excommunicate and depose monarchs who had broken from the church, whereas Protestant monarchs insisted that the Pope had no political power at all.

In *The Supreme Pontiff*, Bellarmine considers three different opinions on the temporal power of the Pope. The first opinion is that the Pope has supreme power over the whole world due to divine law, and that this power can be exercised in both ecclesiastical and temporal matters (Bellarmine 1951: 55). The second opinion, which Bellarmine immediately describes as a heresy, is advanced by Calvin in the *Institutes* (Calvin 1960). According to Calvin, the Pope has no authority over secular princes and 'that the Pope and other bishops were not permitted to receive temporal dominion' (Bellarmine 1951: 55). Bellarmine argues that the moderate, 'Catholic', position is that 'the Pope, as Pope, does not have directly and immediately any temporal power, but only spiritual; yet by reason of the spiritual he has a certain indirect power' (Bellarmine 1951: 56). This position involves two distinct propositions. First, Bellarmine is rejecting the view that the Pope is the direct ruler over all of humanity. The Pope is not the ruler over the whole world, because there are many non-Christian principalities whose rulers and subjects do not follow the teachings or rules of the church. Nor does Bellarmine believe that the Pope rules over the whole Christian world or any specific province or town. He argues that there are two distinct kinds of law: the positive law of specific principalities

and the divine law of Christianity. The positive law of a specific principality is concerned with maintaining order in temporal affairs. And in these matters the Pope has no direct jurisdiction. By this, Bellarmine means that the Pope does not have the power to meddle in the day-to-day affairs of specific principalities, provinces, or towns. Conversely, the Pope is the ultimate authority in all matters of divine law. And while divine law and positive law are different jurisdictions, positive law is tied to a specific territory, whereas divine law is concerned with the souls of all Christians. As such, there is an inevitable overlap in their jurisdictions. As Bellarmine observes:

But although this kingdom properly was spiritual, and through faith we belong to it, yet it cannot be denied that also it extends itself to temporal matters, so far as they are ordered to spiritual matters, as all theologians say (Bellarmine 1951: 65).

And as such, in the event that there is a clash between temporal affairs and spiritual affairs, Bellarmine believes that the power of the Pope should trump the power of the prince. He reaches this conclusion by comparing the two differing ends of temporal and spiritual power. The purpose of temporal power is to maintain peace, whereas the purpose of spiritual power is the eternal salvation of Christian souls. According to Bellarmine, the spiritual power should trump the temporal power because its duration is longer and its purpose is more important. But, spiritual power only needs to concern itself with temporal power in those instances where the actions of a prince place his subjects' eternal salvation in danger. In these instances, 'the spiritual power can and ought to coerce the temporal with every reason and means which will seem necessary for this purpose' (Bellarmine 1951: 88). The primary way in which the Pope can exercise this indirect temporal power, according to Bellarmine, is through his power to depose princes.

There are limits on papal deposing power. The Pope cannot ordinarily depose monarchs, even for just cause. The only instance where the Pope has this deposing power is when the souls of the subjects are at risk of eternal damnation because the monarch compels his subjects to commit heresies, such as leaving the Catholic Church for a different denomination. The Pope's indirect power over temporal laws is exercised through his right to judge whether or not the actions of the prince are endangering the salvation of his subjects. If the Pope determines that this is the case, then Bellarmine argues that the Pope may exercise his indirect power by excommunicating the Prince, taking away the Prince's kingdom and conferring it to another person, and he can declare specific civil laws invalid. Furthermore, Bellarmine argues that it violates natural law:

for Christians to tolerate an infidel or heretical King, if he should attempt to draw away the faithful to his own heresy or infidelity; but it is the Pope's duty to judge whether the King is drawing them away to heresy, or not, for to him is entrusted the responsibility for religion; therefore the Pope's duty is to judge that the King should be deposed, or should not be deposed (Bellarmine 1951: 92).

The Pope's power, according to Bellarmine, primarily lies in his capacity to judge whether or not the monarch has placed his subjects at risk of damnation. Should the Pope decide that a monarch has done this, then other Christian monarchs and subjects can justly declare war on the monarch in order to depose him. To support his claim that Popes have this power to depose monarchs, Bellarmine points to many different instances in which this power was exercised in the past. His most noteworthy examples are of the case of Pope Gregory II excommunicating Emperor Leo and prohibiting his subjects from paying any taxes to the Emperor, Pope Zacharias deposing Childeric and making Pipin king of the Franks, and Pope Gregory VII deposing Henry IV as Emperor and ordering that a new Emperor be elected.

While Bellarmine does not limit the power of the Pope to merely judging monarchs guilty of endangering the souls of their subjects and excommunicating those monarchs, in practice this was the scope of the Pope's power. While at different times in the late Middle Ages and the early modern period Popes did command sizeable armies, in practice the Pope's power of deposing required secular rulers to act on the Pope's behalf. Yet, in making the case that the Pope had indirect power over temporal affairs, Bellarmine was also arguing that the divine law of the Pope was ultimately the supreme authority in temporal matters. The Pope had the right to depose monarchs and replace them with rulers who would act in accordance with divine law. So, in this early modern system of law, positive law had a great deal of autonomy in temporal affairs, yet it was subordinate to divine law on any matters that might be of concern to the Church.

In practice, the Pope's power to excommunicate monarchs was used frequently in the 16th and 17th century, and the excommunications of leaders were in turn used by other powers as justifications to declare war on those monarchs. If non-intervention by external powers and supreme authority in domestic affairs are two of the principal marks of Westphalian sovereignty, then under the legal system expounded by Bellarmine and others such as Suárez and Vitoria in the late 16th century there was not yet a clear concept of sovereignty. However, Bellarmine's arguments in support of the Pope's power to depose monarchs were not abstract theoretical exercises. As discussed above, Popes attempted to exercise the power of



deposition several times in the late 16th and early 17th century. Yet, it is also true that the papal claims of a power of deposition sparked numerous counter-arguments. I will consider these arguments and their synthesis in the writings of Thomas Hobbes in the next section.

### **The rejection of papal authority and the constitution of sovereignty in the writings of Hobbes and his contemporaries**

In his 1609 treatise *Concerning the Power of the Pope* William Barclay criticized Bellarmine's doctrine of indirect papal power in temporal affairs. Barclay was a Scottish-born Jesuit who taught law at the University of Pont-à-Mousson. He is primarily known for defending the absolute power of monarchs against both Huguenot Monarchomach claims that there was a contract between the people and the ruler and the Vatican's claim of papal authority over temporal powers of particular states. As such, Barclay was one of the earliest defenders of absolutism (Salmon 1991: 235–6). In 1610 Bellarmine replied directly to Barclay, using historical precedent and scripture to reassert Bellarmine's position that the Pope did have a right to depose monarchs (Bellarmine 1949).

Bellarmino's arguments also drew a response from Venetian writers upset over a papal interdict placed on Venice in 1606 and 1607. Between 1602 and 1605 there had been numerous clashes between the Catholic Church and the Republic of Venice. The city of Venice had enacted laws that enabled citizens to seize church lands and required the Catholic Church to apply for permits in order to erect new buildings. Two members of the clergy – Scipione Saraceno and Bradolino of Nervesa – were arrested and placed on trial in the Venetian courts rather than being turned over to the ecclesiastical courts of the Church. From the perspective of the Church, these events were an intrusion into its jurisdiction by the civil government of Venice. Pope Paul V responded by placing an interdict on Venice that prohibited the Venetian churches from performing any sacramental services. The political leaders of Venice were also excommunicated. Many of the religious orders within Venice ignored the papal interdict, and the Venetians exiled the orders that did abide by the Pope's command – such as the Jesuits. The crisis ended when the French Cardinal François de Joyeuse negotiated a settlement between the Pope and Venice in which the Venetians turned their two clerical prisoners over to the King of France. Venice, however, never renounced their right to put clergy on trial, nor did they repeal any of their laws concerning the taxation of Church lands (Lievsay 1973: 18). This dispute drew the attention of jurists and monarchs all over Europe.

During the interdict, a Venetian friar by the name of Paolo Sarpi published a set of responses criticizing the papal interdict. As his foil, he used

Cardinal Bellarmine's *The Supreme Pontiff*. In these pamphlets, Sarpi rejected Bellarmine's arguments that the Pope had any power over temporal affairs (Lievsey 1973: 17). Sarpi grounded his arguments in natural law. He argued that natural law guaranteed the autonomy of states in secular matters, and that God had willed natural law. Therefore nothing in scripture (which was the primary source for Bellarmine's claims of papal supremacy) could undermine the state's autonomy (Sommerville 1992: 7). Because Sarpi's writings so strongly asserted the autonomy of states from papal authority, his writings in defense of Venice were sought out by other monarchs with similar disputes with the Pope.

Of these, James VI and I of Scotland and England (hereafter James I), was particularly interested in Sarpi's arguments. Sir Henry Wotton, England's Ambassador to Venice 1604–1610, made James I aware of Sarpi's writings. He is also believed to have helped smuggle Sarpi's writings out of Venice to England, where they were translated and published by James I's press in 1606 (Lievsey 1973: 22). The reason Sarpi's writings were of such interest to James I was because at the same time he was embroiled in a similar struggle with the Pope. Following the failed Gunpowder Plot of 1605, the English Parliament passed a law requiring Catholics to take an Oath of Allegiance that rejected the papal deposing power (Sommerville 1992: 6). In addition, James I published *Triplici Nodo, Triplex Cuneus. Or an Apologie for the Oath of Allegiance* that defended the oath of allegiance and drew upon Sarpi's writings to criticize the Pope's deposing power (James I 1994). Between 1610 and 1615 Hobbes traveled with William Cavendish to continental Europe. During this trip Cavendish befriended Sarpi (Sommerville 1992: 7). And in 1612 James I invited Sarpi and Fulgenzio Micanzio (another Venetian who had published tracts attacking the Pope's deposing power) to visit England. While in England Sarpi and Micanzio pressed the English to be more anti-Spanish as the Venetians believed that Spain was using the cloak of Papalism to pursue an expansionist policy in the Italian peninsula. While England opted to remain out of the European conflict when the Thirty Years War broke out in 1618, because of Venice's and England's shared concern about the papal deposing power, the anti-papal writings of Sarpi and other Venetians such as Micanzio and Marco Antonio De Dominis were widely circulated throughout England in the first half of the 17th century. By the time Hobbes addresses the issues of papal power in Parts III and IV of *Leviathan*, Bellarmine's arguments had been widely critiqued by many English political writers. So, much of what Hobbes has to say about Bellarmine in *Leviathan* would not have been new to his readers. Yet he draws upon these standard arguments to attack not only papal claims of indirect power to intervene in temporal law, but similar claims by radical

Presbyterians (Sommerville 1992: 118). In addressing issues of ecclesiastical power in the third and fourth parts of *Leviathan*, Hobbes was arguing that no authority other than the civil sovereign could exercise power within the state. While his arguments in the first two parts of *Leviathan* about the necessity of a state possessing a single sovereign government are well known, his arguments about the sovereign being independent from any ecclesiastical authority are less well known. Yet, in this part of *Leviathan* Hobbes is making as important a claim about the nature of sovereignty as he does in Parts I and II. Struggles over ecclesiastical power were at the center of both the English Civil War and the Thirty Years War. And Hobbes believed that in order to avoid such conflicts in the future, not only must civil authority be autonomous from religious authority (as Sarpi and his followers had argued), but religious authority must also be subordinate to the secular authority of the sovereign. While this doctrine had many implications, in terms of our interests here, Hobbes' arguments amounted to an assertion that no external authority – such as the Catholic Church – might intervene in the domestic affairs of the state. As such, Hobbes' doctrine of sovereignty contains both internal and external sovereignty.

Let us consider the specifics of Hobbes' argument. Hobbes followed the 17th century natural law tradition – which includes Sarpi and Grotius – in claiming that political rights and obligations can be derived by reason from the law of nature. He used natural law arguments to attack Roman Catholic claims of temporal power. According to Hobbes' reading of Christian history the Catholic Church had usurped the freedom of early Christians. Initially, Christianity had consisted of individuals who followed the teachings of the Apostles because of their virtues. Later, the clergy began to meet in assemblies and decide upon which doctrines were correct. They would then ostracize those who refused to follow the agreed doctrines. Hobbes' called this moment the first 'knot' in the freedom of the Christian laity. Subsequently, some priests amassed enough local power to make themselves Bishops, and finally one Bishop – the Bishop of Rome – declared himself Pope. Hobbes' story of the rise of the Catholic Church was intended to make two arguments (Hobbes 1996: 479–80). First, he was refuting the Pope's claim of having a special place in Christianity. Whereas Catholic writers such as Suárez, Bellarmine, and Vitoria claimed that the Pope's power was a direct inheritance from the Apostles, Hobbes argued that the Pope had usurped this power. As such he had no legitimate claim to command all of Christianity. Second, if the Catholic Church's authority comes from usurpation rather than direct inheritance of power from the Apostles, then it is simply one possible ecclesiastical authority with no special claim over any other. The upshot of this is that the Protestant churches are as legitimate on ecclesiastical matters as the Catholic Church.

While it might seem that Hobbes is endorsing religious pluralism, his primary target in this analysis of church history is Bellarmine's claim of papal supremacy. In Hobbes' words, 'the *Papacy*, is no other, than the *Ghost* of the deceased *Romane Empire*, sitting crowned upon the grave thereof: For so did the Papacy start up on a Sudden out of the Ruines of the Heathen Power' (Hobbes 1996: 480). Hobbes' argument was that the Pope's temporal power was limited to the Papal States. He supported his claim by referring to several passages in scripture where temporal power was superior to spiritual power. First, Hobbes cited that case where High Priest Jehoiada deposed Queen Athalia. Hobbes argued that it 'was either by the Authority of King Joash, or it was a horrible Crime in the High Priest, which (ever after the election of King Saul) was a mere Subject' (Hobbes 1996: 402). Second, Hobbes considered the case of King Solomon deposing the High Priest Abiathar to illustrate that monarchs have the authority to depose and discipline clerics. In citing this passage, Hobbes was challenging the claim of the Catholic Church that it exercised disciplinary power over its clergy. Instead, Hobbes was arguing that this passage demonstrates that spiritual authority must be subordinate to the civil power of a state. Third, Hobbes considered the case of St. Ambrose's excommunication of Emperor Theodosius (Hobbes 1996: 402).<sup>1</sup>

Beginning with William Barclay, critics of Bellarmine had argued that the distinction between indirect and direct power was a rhetorical sleight of hand. Barclay argued that regardless of whether or not the Pope claimed to be acting indirectly for spiritual ends, any attempt to depose a monarch was in fact an exercise of direct temporal power. Because even Bellarmine conceded that secular rulers held direct temporal power, the Pope could not exercise such power. Hobbes pressed the point further, arguing that 'Power is as really divided and as dangerously to all purposes by sharing with another an *Indirect* Power, as a *Direct* one' (Hobbes 1996: 396). Hobbes' point is that any acknowledgment of an indirect power to intervene in temporal affairs would effectively divide the power of the sovereign. Dividing sovereignty would always leave the state at risk of civil war because a dispute between two competing claims to power – the civil authority's claim and the spiritual authority's claim – in practice could not be resolved. As such, Hobbes' theory of sovereignty includes a clear exclusion of the ability of foreign powers to intervene in a state's affairs. While he does not use the language of 'non-intervention,' the most prominent justification for war (at least for Catholic states such as Spain) in the late 16th and early 17th century was to depose a monarch for heresy. The justification for an

<sup>1</sup> Bellarmine (1949: 26) uses this example to make the exact opposite argument: that spiritual power is not in service to temporal power.

invasion often rested on the Pope's excommunication of the monarch. In denying that the Pope had such a power, Hobbes was in effect saying that each state was free to determine its own religious laws and that no outside power could invade a state or depose a government for religious reasons.

Hobbes' solution to the danger of dividing powers was to place both temporal and spiritual power under the rule of the sovereign. This point is clearly illustrated in *Leviathan's* famous frontispiece where the sovereign rules over the whole realm and symbols of spiritual power sit under the right-hand side of the sovereign, while symbols of temporal power sit under the left-hand side of the sovereign. While Hobbes does concede to Bellarmine that spiritual goals are more significant than temporal ones, he argues that this alone does not mean that spiritual power should be superior to temporal power. Instead, Hobbes argues that the temporal sovereign 'ought indeed to direct his Civil commands to the Salvation of Souls' (Hobbes 1996: 316). And to support this argument against Bellarmine, Hobbes turns to scripture. Bellarmine argued that the Pope's spiritual power was inherited from St. Peter, who had in turn inherited it from Christ. And Christ possessed spiritual sovereignty over the earth. Hobbes, however, countered by citing Matthew 16: 18–19, 'Thou art Peter, And upon this rock I will build my Church' (Hobbes 1996: 379). This passage in the Bible has been interpreted in different ways. Bellarmine uses it to demonstrate a transmission of spiritual sovereignty from Jesus to Peter, and to argue that later on Popes received this authority from Peter. Hobbes, however, argues that this passage simply means that the fundamental article of the Church is that Jesus is the Christ, and so long as one accepts this article, one is a Christian (Hobbes 1996: 379–80). Politically, this means that Jesus did not transmit any spiritual or temporal power to St. Peter, and as such the Pope cannot claim to have supremacy over any other power, either spiritual or temporal.

Instead of viewing the Church as a transnational ecclesiastical body that exercises power over all Christians, Hobbes followed the 17th-century Anglican view, originally advanced by Hooker, that the church and the commonwealth were simply two terms describing different aspects of the same community (Sommerville 1992: 117). As Hobbes argues:

And therefore a Church, such a one as is capable to Command, to Judge, Absolve, Condemn, or do any other act, is the same thing with a Civil Common-wealth, consisting of Christian men; and is called a *Civill State*, for that the subjects of it are *Men*; and a *Church*, for that the subjects thereof are *Christians*. *Temporall* and *Spirituell* Government, are but two words brought into the world, to make men see double, and mistake their *Lawfull Sovereign* (Hobbes 1996: 321–2).

The effect of Hobbes' position is that each state should have its own church, and that the sovereign of each state should control both civil and religious laws. Hobbes' primary motivation in centralizing authority was to prevent different religious factions from triggering wars within a state, as had happened during the English Civil War. But he was also concerned that by allowing an external power such as the Catholic Church a justification for intervening in the domestic affairs of a state, there was also the possibility of political tumult. Most English Protestants in the middle of the 17th century had in the backs of their minds the failed attempt by Catholic radicals to blow up King James I and Parliament during the Gunpowder Plot as evidence of the desire of Catholics to undo the English Reformation. Hobbes in particular felt that any claim that the ecclesiastical authorities could make laws or take actions independently of the civil authority was dangerous. As such, his central argument in Parts III and IV of *Leviathan* was that each sovereign should be the head of a national church for its nation, and so long as that church accepted what Hobbes felt was the fundamental tenet of Christianity – that Jesus was the Christ – then the sovereign was free to develop and impose any other religious doctrines that he saw fit.

In terms of the central question of this paper – whether or not Westphalia was the historical event where sovereignty emerged – the 17th-century exchange between Bellarmine, Hobbes, and others over papal deposing powers offers a qualified 'no'. The critics of the Westphalia thesis that I surveyed at the beginning of this paper have all pointed out that the signatories to the treaty of Westphalia did not see themselves as developing a new principle of non-intervention in sovereign states. In this respect, they are correct. However, there are two problems with this line of critique. First, it is very difficult, if not impossible to precisely date when an idea comes into existence. Even in the case of a prominent thinker such as Hobbes, once his ideas are read within their historical context, it becomes apparent that much of what he has to say about Bellarmine had already been said by others. But I think that the attempt to look for specific starting points or origins is the source of confusion in this instance. Rather than asking, 'When did the norm of non-intervention emerge?' it is more useful to ask, 'How did the norm of non-intervention emerge?' When the question is addressed this way, we can see that sovereignty and the norm of non-intervention developed in tandem from the late 16th through the early 17th century. Furthermore, it becomes apparent that the reason non-intervention initially developed as a principle is quite different from the reasons that it exists today. What the exchange between Bellarmine and Hobbes over the deposing power shows us is that secular governments developed sovereignty partially as a way to minimize the influence of papal

authority and power. The cases of the Venetian and English struggles against the Catholic Church had their origins in the fact that through its institutions such as the ecclesiastical courts, the Catholic Church effectively had a separate, transnational political authority that often operated at cross-purposes with civil governments in Europe. As civil governments attempted to exert more control over their jurisdictions, they inevitably ended up clashing with the ecclesiastical power of the Catholic Church. Bellarmine and other political-theologians sought to defend the Catholic Church's jurisdiction, and others such as Hobbes, Sarpi, and Barclay rebutted Bellarmine by asserting that no outside power had the right to intervene in the affairs of the state.

And this brings me to the second problem with the recent revisionist history on Westphalian sovereignty. While the revisionists are correct that the Westphalian principle of non-intervention did not emerge in 1648, the attempt by many of these scholars to move the development of non-intervention to the 18th century is also incorrect. The principle of non-intervention in sovereign states was developed hand in hand with the principle of sovereignty. Political theorists such as Hobbes and Barclay developed these ideas in order to protect the absolute power of their monarchs from both dissent by the nobility and interference by the Pope and the Emperor. Part of the reason for the revisionist confusion is that they are operating with a conceptual distinction – between internal and external sovereignty – that simply did not exist for political writers in the 17th century. While contemporary scholarship makes this distinction all the time, Hobbes did not. In his system the sovereign was 'a Common Power, [that] may be able to defend [its subjects] from the invasion of Forraigners, and the injuries of one another' (Hobbes 1996: 120). According to Hobbes, the sovereign needed to be able to both maintain domestic order and protect subjects from foreign powers. For him there was no internal and external sovereignty; to be sovereign one must exercise both of these facets of sovereignty. As such, the 17th-century theorists of sovereignty were attacking arguments that undermined sovereignty by attempting to justify a right for ecclesiastical powers to intervene in states. And it is through this 17th-century debate that the association of sovereignty with non-intervention by external powers was first articulated.

That being said, the concept of sovereignty did not emerge fully formed from the debates in the 17th century. The story of the development of sovereignty and the principle of non-intervention can be fleshed out by looking at how the concept developed and changed in international law debates from the mid-17th century until the late 18th century. There is not enough space here to fully develop this story, but if we move forward to the writings of Vattel and Wolff we see that one crucial feature in mid-18th

century theories of sovereignty that is different from our contemporary theories is the concept of an impersonal state relating to other impersonal states in an international system. As Onuf argues, Vattel's work is among the first to argue that in order for a polity to exist it must possess sovereignty and be independent of other states (Onuf 1994: 297). Earlier theorists, including Vattel's immediate predecessor Wolff saw the polity as ordered in larger and larger associations up to a *Civitas Maxima*. This paved the way for impersonal statehood and sovereignty in the context of mutual relations between states. The Hobbes–Bellarmine debate in the 17th century was one important moment in the association of state sovereignty with a norm of non-interference by external powers. Yet even in Hobbes – who did have a notion of impersonal statehood and a sovereign right of non-intervention by foreign powers in the affairs of a state – there is not a notion of formal legal equality between states as a constitutive element of sovereignty. Nor does Hobbes' philosophy contain a fully developed theory of state autonomy in its mutual relations with other states. What this means is that the bundle of norms, institutions, and practices that we equate with sovereignty in the modern state system developed gradually over centuries through contestation over the meaning of the term sovereignty.

### **Sovereignty and non-intervention today**

There is a second reason why this early-modern history of sovereignty and intervention is significant. The reason scholars in the late 1990s began to become interested in the connection between Westphalian sovereignty and the norm of non-intervention is because of international debate over the ethics of humanitarian intervention in countries such as Somalia, the former Yugoslav Republics, and Rwanda. Proponents of liberal interventionism<sup>2</sup> were attempting to stake out a position in response to both left-wing and right-wing critics. Critics of interventions on the right were not so much concerned about interventions violating sovereignty, but they were concerned that war undertaken for a purpose other than national security and interest could be dangerous (Vincent 1974; Bull 1977: 53–5). One rhetorical strategy adopted by conservative critics of humanitarian intervention was to argue that states had always intervened in the affairs of others, but to argue that attempts to intervene for idealistic purposes

<sup>2</sup> I am using the term liberal interventionism to describe military interventions that are justified on liberal grounds. The paradigmatic example of this would be the NATO intervention in Kosovo in 1999. Without getting too bogged down in the validity of specific military actions on liberal grounds, I do want to note that in these instances gross human rights violations, such as genocide, are cited as justifiable reasons for violating the sovereignty of states.



ignored the realities of international power politics (Morgenthau 1967). Critics of humanitarian intervention on the left were often skeptical of the humanitarian aspect of humanitarian intervention (Chomsky 1999; Hardt and Negri 2001). They saw humanitarianism as a rhetorical cover for neo-imperial actions. As such, many of them saw sovereignty and the principle of non-intervention as a means to protect the autonomy of states in the periphery from the great powers. And so, one of the consequences of this debate is that critics of humanitarian intervention on both the left and the right reinterpreted the history of sovereignty and non-intervention for their own purposes. Hence, realists such as Krasner attempted to separate the history of intervention from the sovereignty of the state in order to argue that state sovereignty does not necessarily mean that a state is free from intervention (Krasner 1999: 120–1). Liberal defenders of humanitarian intervention wanted to move the moment when intervention was equated with the state to the 18th or 19th century in order to argue that it is a feature of the *liberal* state, and as such states that act illiberally are ceding their right to sovereignty (Donnelly 1993; Bickerton, Cunliffe, and Gourevitch 2007; Annan 1999). So untangling the connection between sovereignty and intervention actually serves the interests of those who support intervention and those who do not.

My interest here is not to use the 17th-century debates over sovereignty to resolve contemporary debates over humanitarian intervention. Indeed the two debates, while both over matters of intervention and sovereignty, are about very different issues. Many of the arguments used in the 17th-century debates – such as appeals to Thomistic natural law and scripture – are unlikely to have much currency in our multicultural world. But, what these early debates do demonstrate is that advocates of humanitarian intervention are ignoring a crucial aspect of how interventions could be carried out. When Bellarmine and other defenders of papal deposing power were making their arguments, they argued that the Pope had the authority to judge if a monarch's actions were putting the salvation of his subjects at risk. This judging authority was crucial. As we discussed above, Bellarmine felt that other monarchs and subjects could only act to depose a monarch if the Pope had first determined that the monarch's actions were worthy of excommunication and deposition. While Popes did possess armies in the late 16th and early 17th centuries, their ability to effectively depose a monarch often relied upon the armies of the Holy Roman Empire and other states closely allied to the Catholic Church. As such, the real basis of the Pope's indirect temporal power was the authority that the Pope had to be the ultimate judge of whether or not a monarch's actions justified removing the monarch from office. The crux of the 17th-century debate was over the consequences of allowing an external agent to

possess this type of authority. Defenders of the absolute monarchies of the 17th century argued that such authority would undermine domestic security and tranquility, whereas critics such as Bellarmine warned about unchecked authority. In this sense there are interesting parallels with contemporary debates over intervention. Some critics of intervention are worried that permitting a right to intervene might undermine the stability of the international system. Promoters of humanitarian intervention worry that absolute sovereignty could lead to horrific human rights' abuses. What defenders of humanitarian intervention often ignore or sidestep is the question of authority. In the case of the Catholic Church's 17th-century position, the Pope was the supreme authority on these matters. In the first decade of the 21st century the development of the norm of the Responsibility to Protect raises several similar issues to the 17th-century debate between Bellarmine and Hobbes. The Responsibility to Protect doctrine has three provisions:

1. Each state has a responsibility to protect its civilian population from genocide, ethnic cleansing, war crimes, and crimes against humanity.
2. If the state cannot protect its own population, then the international community is responsible for assisting the state by building its capacity.
3. If a state is manifestly failing to protect its citizens from mass atrocities and peaceful measures are not working, the international community has the responsibility to intervene at first diplomatically, then more coercively, and as a last resort, with military force. (International Commission on Intervention and State Sovereignty, 2001; United Nations, 2005; United Nations, 2006; United Nations, 2009).

The 2005 World Summit Outcome document paragraphs 138 and 139 outlined the four crimes that the Responsibility to Protect covers: genocide, ethnic cleansing, war crimes, and crimes against humanity. Paragraph 139 asserted that the UN Security Council has authority through Chapter VII of the UN Charter to take 'timely and decisive action' to stop atrocities. In 2006 the UN Security Council ratified resolution 1674, which reaffirmed the Responsibility to Protect norm as outlined in the *World Summit Outcome* document. What this means is that the UN Security Council now acts as the ultimate judge to determine if a state's behavior justifies an international intervention. In this sense the Security Council is increasingly adopting similar authority to the authority the Pope exercised during the late Middle Ages and early modern period. While the rationale for interventions was quite different, and the processes by which such judgments are made is also different, in both instances an authority beyond the state is claiming that it has the ability to depose a state's government in certain limited instances. In this respect the recent development of the

Responsibility to Protect norm represents a limited undoing of the norm of sovereign non-intervention that Hobbes and others had developed in opposition to papal claims of a deposing power.

Yet in this attempt to develop a new norm of limited intervention some questions about authority are not being directly addressed. In particular, there are two issues that this debate raises. First, what happens when the Security Council fails to take action? Second, does this unbundling of the norm of non-intervention from sovereignty represent a more significant shift in the meaning-in-use of the term sovereignty than many advocates of humanitarian intervention first acknowledge? On the first matter, contemporary defenders of humanitarian intervention are not clear about which body should be invested with the authority to judge should the Security Council fail to act. While the recent UN Security Council authorization for the no-fly zone over Libya is a textbook example of the UN implementing the Responsibility to Protect norm, there have been several other incidents where the UN has declined to act. For example, the NATO intervention in Kosovo is illustrative of this problem. Initially the U.S. and her allies sought UN Security Council approval for an intervention, but when China and Russia blocked this, the U.S. instead sought out NATO as the transnational body to legitimize its intervention. The consequence of this was that the NATO allies opened themselves up to suspicion on both the left and the right for their actions. Similarly, during the Russian war with Georgia in 2008, Russia cited the Kosovo intervention as justification for its intervention in South Ossetia. So, the precedent of NATO acting on its own to intervene has emboldened other states to do the same thing. The danger with this is that humanitarian intervention does end up being used as rhetorical cover for expansionist policies by states, thereby bringing about precisely the kinds of problems that English School writers identified in the 1970s.

On the second matter, the development of the Responsibility to Protect norm represents an interesting revival of the type of argument Bellarmine and his allies used to defend the papal deposing power. So, revisiting the 17th-century debates over sovereignty and intervention in this context reminds us that non-intervention is a core feature of state sovereignty. Permitting a transnational body the authority to intervene in a state and change the regime when its actions violate a bedrock principle such as salvation or human rights fundamentally compromises state sovereignty. There is nothing wrong with this in principle, but those who are advocating such an approach to international law must realize that in permitting a right of intervention, one is undermining one of the core functions of the state – its ability to protect its population from harm by outside forces – without offering up a clear institutional alternative that protects the security

of the population by offering clear criteria by which to judge when an intervention is justified (Finnemore 2008: 214–18). Obviously, in a multi-religious world the Catholic Church could not serve as such a body, and the UN as it is currently constituted is limited in its ability to effectively act in this way. So, those who are serious about enshrining a right to humanitarian intervention need to develop some transnational institution that is capable of acting as the ultimate authority in judging when a humanitarian crisis reaches the threshold of justifying an intervention.

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