Nicaea and Sovereignty

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...in matters of state the master of brute force is the master of men, of the laws, and of the entire commonwealth.
The Emperor and Empire resign and transfer to the most Christian King, and his Successors, the Right of direct Lordship and Sovereignty…

Article LXXIII, Treaty of Münster, October 24, 1648

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

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

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

This research is concerned with the development of international law in so far as it relates to the historical background for the Peace of Westphalia, which itself is understood as a seminal event in the history of the growth of both the theoretical notion of sovereignty and, in its present milieu, as an attribute of states. In keeping with the challenge of Leo Gross to re-examine the foundations of international law and organization,⁴ the aim of this research is to get behind Westphalia, to suggest a plausible nexus of ideology and events which led to these treaties, and to focus specifically on the event which I suggest was the sin qua non development leading to the Westphalian

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concord. I suggest that the course set for the Church at the Council of Nicaea in 325 C.E. best explains both the context and initial impetus for the treaty-making at the Peace of Westphalia in the seventeenth century. I also suggest that the similarities between the two politically charged congresses are far more than random correlative.

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

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6 Although the treaties were not signed until October 24, 1648, these two assembly’s were actually called to begin on the 11th of July, 1643, and met in Munster and Osnabrug, according to the 1710 English edition of the Treaty: The Articles of the Treaty of Peace, Sign’d and Seal’d at Munster, in Westphalia, October the 24th, 1648, in A General Collection of Treatys, Declarations of War, Manifestos, and other Publick Papers, Relating to Peace and War, Among the Potentates of Europe, from 1648 to the present Time (London: Printed by J. Darby for Andrew Bell in Cornhill, and E. Sanger at the Post-house in FleetStreet, 1710), Treaty Opening, 2. The latter city appears as Osnabrug in this text, although the German city is known today as Osnabrück. The articles of the peace were signed and sealed at Münster, on October 24, 1648.
at the epicenter of both these historically separated events, it does not change the fact that
both the Nicene Council and the Westphalian settlement were both squarely aimed at
vouchsafing a political peace via constitutional documents of a legal nature.

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

This research will not attempt to deal with the vast time period between these two
watershed events, for obvious reasons of length, but also because of the ‘sovereignty
gap,’ which, for Europe, stretches from the end of late antiquity up until the early modern
period. In agreement with F.H. Hinsley and Wolfgang Preiser on the subject, this
research acknowledges that while many important political developments occurred
between Nicaea and Westphalia, hardly any of it had an effect on international law and
sovereignty where Europe is concerned. The ubiquitous presence of the two universal
powers of Empire and Church were the guarantors of an Augustinian worldview which
ran in an almost unbroken nexus from Augustine to Luther. While it is true that many

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7 F.H. Hinsley noted that the idea of sovereignty was largely “irrelevant” pursuant to this period of
time: F.H. Hinsley, Sovereignty (New York: Basic Books, 1966), 129; Wolfgang Preiser maintained that
the lack of equal status between nations for this period was also vexing upon any notion of functional
international law: Wolfgang Preiser, History of the Law of Nations, Basic Questions and Principles, in
History of International Law ∙ Foundations and Principles of International Law ∙ Sources of International
Law ∙ Law of Treaties, vol. 7 of Encyclopedia of Public International Law, eds., Rudolf Bernhardt et al.,
(Amsterdam: North-Holland, 1984), 137.
legislatively and politically charged Church Councils took place between Nicaea and Westphalia,⁸ the all important precedent had already been set by Constantine in the fourth century. Nicaea and the consequent trajectory set for the Church by Constantine at that Council proved to be the anchor which kept the Church wedded to state regulation, legislation, and punitive enforcement until the universal powers began to come unglued: most noticeably during the Early Modern period.

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

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

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¹⁰ Here I refer to money which flowed to the Church under the rubric of the ‘Patrimony of St Peter.’
¹¹ R.A. Markus, Gregory the Great and His World, 112.
It has also been poignantly noted by F.H. Dudden: “It is at least quite certain that at the beginning of the seventh century the Roman Church owned many hundreds of square miles of land and drew annual revenues amounting to hundreds of thousands of pounds.”

Henry Maine’s ‘tax-taking’ and ‘legislating’ Roman Empire in the West was now in the hands of the Christian church. The rule of Gregory I and, later on, Innocent III in the late twelfth and early thirteenth centuries were periods which exemplify the historical reality that sovereign power in Europe regularly devolved on the Church with varying degrees of gravity pursuant to the strength of any, but not always as with Gregory, concomitant emperor.

While this research does not attempt any thorough treatment of Gregory and his life and times, yet it is important for the reader to understand that with Gregory we see the fulfillment of the precedent setting relationship which Constantine began with the Church at Nicaea. With Gregory the religion had finally and inexorably taken on the role of the sovereign power in Rome. Over the centuries this sovereign power was ultimately shared between the papal office and Frankish Kings, who were ultimately styled Holy Roman Emperor’s. The resilience of the affinity for this imperial designation lasted centuries, even into the Modern era where the Westphalian Treaty opens with:

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

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12 F.H. Dudden, Gregory the Great: His Place in History and Thought (London: Longmans, Green & Co., 1905), i, 296, as in Richards, Consul of God, 127.
13 Sir Henry Sumner Maine, Lectures on the Early History of Institutions, 7th ed., (London: John Murray, 1914): 330: …the Roman Empire, while it was a tax-taking, was also a legislating empire. It crushed out local customs, and substituted for them institutions of its own.
the most Serene, and the most Puissant Prince, Lewis the Thirteenth, most Christian King of France and Navarre, with his Allies and Adherents on the other side.\textsuperscript{14}

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

\textbf{Historical Inquiry and Policy}

Wolfgang Preiser once lamented that late nineteenth and early twentieth century historical legal scholars purposefully ignored everything prior to the fourteenth century in international legal development.\textsuperscript{15} While it may be the case that the balance of historical inquires have started with Westphalia, I would suggest that these councils in the late seventeenth century were as much a part of the history that necessitated them as they were a harbinger of increased self-determination and sovereignty. In other words, Westphalian sovereignty did not emerge in a vacuum, quite the contrary: Westphalia was necessitated by the immediate contextual factor of the power struggle between the French

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

King and the Holy Roman Emperor and the more distant contingency of the pervasive and variegated involvement of the Church in state governance which had begun at Nicaea, centuries before.

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

Whereas nineteenth-century European history often sought to confirm the reader’s belief in moral values already constitutive of the socio-legal order in which she or he lived, a constructive approach seeks to persuade the reader that socio-legal innovations are needed in light of historical materials.16

Hudson’s encouragement of constructive approaches vis-à-vis the rank-and-file method of “pure” historical inquiry has accentuated my own comparative style of analysis, and it is my hope that by “laying out”17 some pertinent historical materials, this research will further inform the ongoing conversation about where sovereignty as an idea stems from, and, perhaps more importantly, how a more nuanced appreciation of that process will help us better steward the boundaries of any future incarnation of the idea. An important aspect of sovereignty’s meaning that I assume in this research is that it is dynamic, and subject to historically situated contextual considerations.18

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

The Multi-National Council of Nicaea

For as, by a sincere confession of the truth, we ourselves, in obedience to the Council of Nice, worship God as the Creator of all things, and as the Fountain of our imperial sovereignty…
Emperors Honorius and Theodosius II, *Letter to Bishop Aurelius* (June 419 C.E.)

In 325 C.E., representatives from Libya, Syria, Phoenicia, Arabia, Palestine, Egypt, Thebes, Persia, Scythia, Pontus, Galatia, Cappadocia, Phrygia, Pamphylia, Thracia, Macedonia, Spain, and other imperially governed regions met at the command of a Roman emperor in the city of Nicaea, in what was then Bithynia. The mere composition of the summit, alone, leads to the supposition that there was some manner of international

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20 Modern day city of Iznik, in Turkey.
conference being held. This “world-wide” conglomeration of nationalities, numbering over two-hundred and fifty religious leaders – to wit, bishops of the Christian Church – was convened by the most powerful political leader of the, then, known world.

Constantine the Great (272 – 337 C.E.) had summoned these dignitaries both to consolidate his own newly acquired political power and because his recently procured imperial peace was being threatened by the real possibility of further conflict. Christian bishops were verbally attacking one another and whole populations were coming close to all out physical confrontation.

What can be known about Constantine’s life and times comes from primarily three extant sources. Eusebius of Caesarea, Bishop of Caesarea during Constantine’s reign, wrote Vita Constantini (VC), or Life of Constantine, this being the largest work devoted to the Emperor which survives. Zosimus, a pagan historian from the early sixth century, wrote Nea Historia, or New History, which covers the first four centuries of the Roman

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22 Eusebius, Life of Constantine, 3.7.1, 124.
23 All dates hereinafter can be assumed to be of the Common Era unless specified otherwise.
24 Jacob Burckhardt, The Age of Constantine the Great, 295.
25 Eusebius, Life of Constantine, 2.73, 119-120: But it was too great a matter to be dealt with by the letter, so that the ferocity of the quarrel increased, and the spreading evil reached every province in the east; 3.4, 122: The bishop of one city was attacking the bishop of another, populations were rising up against one another, and were all but coming to physical blows with each other; Paulus Orosius, Seven Books of History Against the Pagans: The Apology of Paulus Orosius, trans. Irving Woodworth Raymond (New York: Columbia University Press, 1936), 7.28, 365: When Arius also incited to riot those whom he had led into error, an assembly of three hundred and eighteen bishops was convened at Nicaea, a city of Bithynia. See also Athanasius, History of the Arians, St. Athanasius: Select Works and Letters, ed. Archibald Robertson, vol. 4, A Select Library of Nicene and Post-Nicene Fathers of the Christian Church, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1980), 270 ff.; even after Constantine had mandated a peace by fiat, the battle that had been raging between the two sides went on, and Athanasius, who was Bishop of Alexandria after Alexander, and was against Arius et al., goes on at some length to describe the intensity of the struggle.; Other extant accounts: Theodoret, The Ecclesiastical History of Theodoret, trans. Blomfield Jackson, A Select Library of Nicene and Post-Nicene Fathers of the Christian Church, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1979), 1.1-1.7, 33-44, as well as Socrates Scholasticus, The Ecclesiastical History by Socrates Scholasticus, Socrates, Sozomenus: Church Histories, rev. A.C. Zenos, vol. 2, A Select Library of Nicene and Post-Nicene Fathers of the Christian Church, eds. Philip Schaff and Henry Wace (Grand Rapids: Eerdmans, 1983), 1.1-1.10, 1-18.
Empire and includes a shorter account of the Emperor’s reign and politics. The third source is an even shorter work known as *Origo Constantini Imperatoris*, and it is written in the style of an epitome, and therefore it covers the events of Constantine’s life in a rather abbreviated matter.\(^{27}\) Although the author is unknown, it has been suggested that it would have been someone writing from the late fourth century.\(^{28}\) All three accounts are rather indicatively coloured by the contexts and intents of their authors, especially the works written by Eusebius and Zosimus. Eusebius wrote the *VC* as a friend and subordinate of the Emperor Constantine, and it is a work which regularly delves into hagiography. Scholars recognize and oftentimes emphasize this weakness, but even Jacob Burckhardt, one of Eusebius’ most outspoken critics on record,\(^{29}\) cannot deny the accuracy of much of the historical data contained in the *VC*.\(^{30}\) Burckhardt saw Eusebius as dishonest because he interpreted the events of Constantine’s life through a Christian lens, and often exaggerated or filled in details which he had no business doing. Even in light of this, though, the basic details of the *VC* have been treated as reliable in the main.\(^{31}\)

On the other hand, Zosimus, the writer of *New History*, was a pagan historian who described Constantine in the most unflattering terms. Yet here again, regardless of the


\(^{28}\) Ibid., 6.

\(^{29}\) Burckhardt famously wrote, ‘Eusebius is no fanatic; he understands Constantine’s secular spirit and his cold and terrible causes of the war quite precisely. *But he is the first thoroughly dishonest historian of antiquity.* His tactic, which enjoyed a brilliant success in his own day and throughout the Middle Ages, consisted in making the first great protector of the Church at all costs and idea of humanity according to his lights, and above all an ideal for future rulers.’ [emphasis added] Jacob Burckhardt, *The Age of Constantine the Great*, trans. Moses Hadas (New York: Doubleday Anchor Books, 1956), chap. 8, 272.

\(^{30}\) Burckhardt wrote, ‘Although this story comes from Eusebius, whose notions of paganism in general are not always the most precise, and whose desire for truthfulness is not always compelling, nevertheless in view of the evil and savage nature of Maxentius there is no ground to doubt the tale.’, Jacob Burckhardt, *The Age of Constantine*, chapter 6, 200.

lack of dispassion on Zosimus’ part, the historical details are basically sound. It is the interpretation of the events, as with Eusebius, which has given rise to much criticism.

Context for Constantine

From the time of the Roman Empire’s crisis in the third century right through Diocletian’s Tetrarchy and up to Constantine’s own period of accession to Caesar, the vast and unwieldy dominions of Rome had been reeling in social, political, and military chaos. In 325, just prior to the Council in question, the maelstrom had finally paused. In hindsight one wonders whether this period was really a cessation of hostilities or merely the eye of the storm. Constantine had finally put down his last serious rival in the Emperor Licinius, and after first sparing his life at the request of his sister who was married to the man, and “for fear that Licinius might again, with disastrous results for the State, resume the purple which he had laid down,” Constantine soon had him assassinated. I suggest that it is strongly indicative of Constantine’s calculating disposition that he called this council at Nicaea on the heels of a newly acquired and tentative political peace. In other words, Constantine was in no mood for another war. Constantine’s Machiavellian disposition was, according to the Pagan historian Zosimus,

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32 Odahl, Constantine and the Christian Empire, 7-8.
35 Niccolo Machiavelli, 1469-1527 C.E., wrote famously: When it is absolutely a question of the safety of one’s country, there must be no consideration of just or unjust, of merciful or cruel, of praiseworthy or disgraceful; instead, setting aside every scruple, one must follow to the utmost any plan that will save her life and keep her liberty. Niccolo Machiavelli, Discourses on the First Decade of Titus Livius, trans.
well known due to the offhand killing of his own son, Crispus, followed by his brutal execution of the young man’s stepmother and his own wife, Faustus.⁶⁶ According to another late antiquity historian, Orosius, Constantine also killed off his own nephew, Licinius.⁶⁷ Zosimus records that Constantine’s guilt over killing Crispus and Faustus was the key ingredient to his adoption of Christianity. Apparently an Egyptian Christian, unnamed, of the royal court told him he could be forgiven anything if he adopted Christianity.⁶⁸ We are told that Constantine “abandoned his ancestral religion” and embraced Christianity.⁶⁹ This sea change in the new emperor’s religious loyalties augurs importantly when considering the importance of context pursuant to the Council of Nicaea, discussed further below.

Constantine called the council to vouchsafe and guarantee peace because it was apparent to him that if he did not intervene, more “disastrous results” for his state might follow.⁷⁰ So intervene Constantine did. He wrote letters to the two main combatants in

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⁶⁵ Hinsley, Concept of Sovereignty, 281.

⁶⁶ Zosimus, *Zosimus: New History*, trans. Ronald T. Ridley (Canberra: Australian Association for Byzantine Studies, 1982), 2.28.2 – 2.29.2, 36. Zosimus tells us that Constantine killed Crispus based on suspicion that the young man had intercourse with his stepmother Faustus. When Constantine’s mother proved unconsolable upon the boys death, he apparently killed the mother, his wife, in an overheated bath (2.29.2, 36-37).


⁶⁸ Zosimus, *New History*, 2.29.3-4, 37.


the dispute, Alexander and Arius. What is telling of the serious and widespread nature of this political threat is that these letters, astonishingly, had no apparent effect. Eusebius records that “it was too great a matter to be dealt with by the letter, so that the ferocity of the quarrel increased.” How these letters from an Emperor, who represented such decisive military strength, could not calm the pervasive hostilities perhaps goes to some length in explaining why Constantine, chafed as he was by the conflict, wanted to get this growing unrest settled as quickly as possible.

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

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

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

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41 Alexander (date of birth unknown: died 326 C.E.) was the Bishop of Alexandria, at the time, and Arius (ca. 250-336 C.E.) was a priest in the same city.
42 Constantine, Eusebius, *Life of Constantine*, 3.73, 119-120.
For instance, Constantine made the decisions of the bishops binding and no longer appealable to the pagan courts.\textsuperscript{44} Eusebius writes:

He also put his seal on the decrees of bishops made at synods, so that it would not be lawful for the rulers of provinces to annul what they had approved, since the priests of god were superior to any magistrate.\textsuperscript{45}

The fact that he put the bishops on an even footing with the pagan judges shows to what lengths the Church was being moulded in to a sovereign organization. Burckhardt comments on this seemingly surprising move by the Emperor by writing, “what was he to do when, by the general tendency of the age, the Church had turned into the state under his hands and the state into the Church.”\textsuperscript{46} Similarly, Francis Herbert Stead has variously noted that:

In social organization, Christianity was powerfully influenced by the pagan Empire. The Church may in its earliest local phases have owed much to Greek and Roman collegia of various kinds, notably burial clubs, and also to the Jewish synagogue; but the chief formative attraction, whether consciously recognized or not, was Roman Imperialism.\textsuperscript{47}

As the city Church extended and had many branches, they were entrusted to presbyters under the superintendence of the bishop of the mother-Church. Gradually the bishops of the greatest cities extended their sway over the surrounding country; and Diocletian’s term – diocese – for a political division of his Empire passed into the Church.\textsuperscript{48}

…throughout the provinces of the Roman Empire, the Churches felt themselves to be members of One Universal or Catholic Church. The analogy with the Empire is obvious. The Catholic Church grew to be an Empire within an Empire.\textsuperscript{49}

Yet this burgeoning theocracy, according to Burckhardt, was not merely the work of Constantine alone, or even of his attendant bishops, but was rather the necessary result stemming from a process within world history.\textsuperscript{50} Based on the, then, exponential growth

\textsuperscript{44} Burckhardt, \textit{The Age of Constantine the Great}, chap. 9, 297.
\textsuperscript{45} Eusebius, \textit{Life of Constantine}, 4.27.2, 163.
\textsuperscript{46} Burckhardt, \textit{The Age of Constantine the Great}, chap. 9, 297.
\textsuperscript{48} Stead, \textit{Social Christianity}, 45-46.
\textsuperscript{49} Stead, \textit{Social Christianity}, 46.
\textsuperscript{50} Burckhardt, \textit{The Age of Constantine the Great}, chap. 9, 297.
of the Christian Church, Burckhardt generally characterizes Constantine’s embracing of the religion as the move of a consummate pragmatist and artificer, and one who knew very well that for a succinct consolidation and legitimization of his rule, the transfer of some aspects of the Empire’s sovereign power to the Church was essentially a fait accompli. The question as to why may be speculated and disagreed upon, but the fact that Constantine opened the door to a shared political rule with the Church seems reasonably clear from the extant texts.

Two Fissures over Two Millennia

Constantine’s Council in 325 was convened to vouchsafe stability and guarantee his own rule in the Empire, to be sure, but this required bringing peace to the dominant religion of Christianity which, above and beyond the societal instability it was causing, was also threatened internally by the growing Arian polemic. A prima facie look at the facts pursuant to the internal conflict reveals that there was a doctrinal dispute and the sprawling Christian Church had been consequently bifurcated into two dogmatic groups. A large segment of the Christian population took the side of one Bishop Alexander of Alexandria (died 326), who held that Christ was God and had existed along with him for all time. An equally large segment of the population sided with a Christian priest named Arius (ca. 250-336 C.E.), who taught that Christ was the firstborn of all God’s creation,

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

and so had a beginning, unlike God.\textsuperscript{53} Each separate camp in this war over dogma eschewed the other’s teaching and proclaimed their opponents heretical. The Roman world seemed to be teetering towards another large scale confrontation because of dogma. From our perspective in the twenty-first century, such a state of affairs seems odd, to say the least. How could the political stability of the largest empire the world has ever known have been threatened by dogma? I will suggest an answer to this further below.

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

\textsuperscript{53} Arius, \textit{The Letter of Arius to Eusebius, Bishop of Nicomedia}, in Theodoretus, \textit{Ecclesiastical History: A History of the Church in Five Books, The Greek Ecclesiastical Historians of the First Six Centuries of the Christian Era in Six Volumes} (London: Samuel Bagster and Sons, 1843), chap. 5, 23-25. Arius writes: But we say and believe, and have taught, and do teach, that the Son is not unbegotten, nor in any way unbegotten, even in part; and that he does not derive his subsistence from any matter; but that by his own will and counsel he has subsisted before time, and before ages, as perfect God, only begotten and unchangeable, and that he existed not before he was begotten, or created, or purposed, or established. For he was not unbegotten. We are persecuted, because we say that the Son had a beginning, but that God was without beginning.
Council of Nicaea while the other resulted in a brutal and decimating war. This war lasted thirty years before the various European Christian monarchs and statesmen decided to make peace, the Peace of Westphalia.

Another important difference between these two historically separated conflicts was the fact that at Nicaea, although the Christian church had threatened the political stability of the empire, there was a more clear delineation between imperial power and the church. Westphalia, on the other hand, was necessitated because the Roman Christian Church had long since evolved into a co-regency of military imperial power and, in the context of having to deal with such powerful combatants, it could not simply do away with the heretics, as was previously so often the case. The protestant heretics, by then, represented whole nations, thanks, in large part, to the reforming work of people such as John Wyclif (ca. 1325-1384 C.E.) from England, Jan Hus (1372-1415) in Bohemia, Martin Luther (1483-1546) of Germany, and Jean Calvin (1509-1564) hailing from France. Interesting, as well, in this observation is the fact that when we consider that these people lived in three fairly distinct time periods, their locations suggest that the cleavage in Christianity was a pan-European cultural phenomenon. The Thirty Years’ War highlighted how divided Christianity in Europe actually was.

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

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

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

**The Practice of Religions and the Council of Nicaea**

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

Roman Emperor Maximinus, *Letter to Sabinus* (ca. 312 C.E.)

Eusebius, *The Ecclesiastical History*

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

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During the fourth century of the Common Era, and in every place on earth that Roman soldiers cast their shadows, the practice of religion was ubiquitous. Religions were as common then as, say, currency is today. Very few people today get by without money, and those who do, are usually recipients of goods bought with money, so that it touches virtually everyone on the planet. Religion, in the fourth century, had a similar saturation level. While it may be true that one person may have had more of it invested in his life than others, and another preferred certain gods over others, yet everyone, whether sincere or not, participated at some level in the various Roman religions. In fact, in most cases, as far back in recorded history as you wish to look for any given region of the world, you will usually come face to face with a blatantly theistic worldview. Not until the beginning of the Modern era, perhaps, did such a statement cease to be true for much of the Western World.

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

Due to the keen and incisive work of scholars like Michael Lipka, quoted above,\textsuperscript{56} the absolutely essential role played by religions in Greco-Roman societies is fast becoming a commonly accepted fact in the literature. I flag it here to emphasize just how deeply ingrained the role of religion was in the lives of all people, rich or poor,\textsuperscript{57} within Constantine’s Roman Empire, including those who governed the state. Scholar A.D. Lee has recently noted that:

The world in which Constantine grew up during the late third century was a world “full of gods.” It was full of gods in the sense that “religion pervaded every aspect of political and social life” and that religious life in the Roman Empire encompassed an extraordinary diversity of deities and of expressions of devotion to those deities.\textsuperscript{58}

Constantine was the Roman emperor who, perhaps, best exemplifies the degree to which religion was considered a tenet on which the Roman Empire depended for its relative success or failure. One piece of evidence to this effect is found in a letter preserved by Eusebius of Caesarea 263-339, written by Constantine to all Roman citizens and provincials after he had defeated his enemies and consolidated the Roman Empire in the early fourth century. After waging his final successful campaign against the former

Roman Emperor Licinius (250 – 325 C.E.), Constantine wrote two letters to the


\textsuperscript{57} Lipka, Roman Gods, 167-185.

aggregation of people across the empire’s vast dominions. One of these letters was sent to the Christians in every city while the other was, according to Eusebius, sent to the “outsiders in each city,” those who had not adopted the new religion. The letters seem to be aimed at explaining who and what had caused the Empire’s recent troubles and also describe Constantine’s subsequent rise to power. The letters also evidence that Constantine had determined to have the many past injustices against Christians put right. Eusebius records that the letters were reproduced in Latin and Greek and sent to all corners of the empire.60

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

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

For a long time past it has been obvious to those of right and sound views about the Supreme, and to the absolute exclusion of all doubt, how great that difference is which distinguishes the

correct observance of the most sacred cult of Christianity from those who are violently hostile and adopt a contemptuous attitude to it.  

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

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

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

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

If these excerpts are from a letter to people who had not adopted Christianity, then, clearly, one of the inferences about this variegated group of recipients one can deduce is that they were people whose lives were already decidedly vested in their religious beliefs.

If such palpably religious discourse from Constantine was offered to his entire civitas,
then there must have been an expectation that such discourse would be effective. Constantine wrote this religiously charged letter to a people who were, while not Christian, still deeply committed to the idea that another spiritual world existed which affected not only their daily lives, but also the success or failure of their state. Augustine’s reflections, for instance, in his *City of God* on the integral role of gods in the lives of people within the empire also bears out this point conclusively.\(^{66}\) The foregoing observations on Constantine are made in an attempt to better orient the reader, contextually, to the palpable nature of religion’s role in the life of not only the most powerful and influential political figure of late antiquity, the Emperor, but also within fourth century Roman society at large.

**Lipka’s Spacialization Thesis: From International to National Religion**

Another key to understanding the importance of context in regards to this era is to observe how comprehensively Constantine brought a monotheistic Christianity into confluence with an already polytheistic society and culture. Michael Lipka has most recently written on the importance of ‘spacialization’ pursuant to Roman religions. He notes that “all major Roman gods were clearly and emphatically marked by permanent spatial foci of their cults in the city, especially by a temple.”\(^{67}\) Yet Christianity, prior to Constantine, had no such dominating physical and societal edifices. An obvious reason for this was the fact that, being a persecuted and despised religion, such as they often were for the first three-hundred years of their existence, they could not hope to be as recognizable or associated with “space” as the Roman religions were.

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\(^{66}\) Augustine, *Concerning The City of God against the Pagans*, trans. Henry Bettenson (London: Penguin, 1984), 4.11, 149-152; see chapter four of *City of God* generally for similar evidences of the role of gods in the lives of Romans. See also, A.D. Lee, *Traditional Religions*, 1999.

Constantine’s participation in the issuing of the Edict of Milan, 313 – which had freed the Christians and legislated religious toleration across the empire – had not really changed the essential nature of Christianity as a stateless religion.68 The Edict of Milan meant the Romans had acknowledged Christians, but it was not until Nicaea that the adoption became constitutionally entrenched. Lipka, on this transformation, notes that the Christian and Jewish religions had the only ‘international gods’ in the ancient world.69 He writes:

It was the spatial independence that gave the Christian and Jewish gods an advantageous position: first, it made them virtually impregnable and ‘immune’ to imperial intervention. Since the Jewish and Christian gods were not spatially bound, their cult was elusive and beyond the control of Roman officialdom. Second, such independence made the Christian and Jewish gods extremely marketable merchandises that could easily be accommodated to virtually any environment without further expense. The latter point was reinforced by the monotheistic character of the two gods, allowing their export virtually anywhere without the necessity to accommodate their functions (naturally, a single god was functionally indifferent). In fact, in their striking lack of spatial focalization and functional self-sufficiency the Christian and Jewish gods were the only 'international gods' of the ancient world, the gods, as pointedly remarked by Weber, favoured by "itinerant journeyman", (Weber, Economy, 512) or in the words of Ando, "in ambition a truly imperialist cult." (Ando, 2007, 445) It was not until Constantine the Great that the Christian concept of god began to be formed by spacial foci.70

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

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68 .Stateless religion’ is my elaboration on Lipka’s notion of ‘international gods,’ Lipka, Roman Gods, 187-188.
69 Lipka, Roman Gods, 187-188.
70 Lipka, Roman Gods, 187-188.
Lipka emphasizes that it was with Constantine that the practice of Christianity was converted to reflect a pagan Roman model.\(^\text{71}\) I suggest that an important part of this transformative process was the Nicene episode wherein the emperor convinced the multinational representatives to agree on the wording of the ‘treaty’ in a markedly constitutional way. By moving the Church towards this practice of international congresses and precedent setting documents, he moved the Christian religion out of its organic and diverse existence to a pagan model where the practice of the ‘ancient traditions’ became the all important key to their existence. It can be no surprise then that the Roman Catholic Church ultimately decided that the life of the religion would be guided not merely by the sacred texts, as was the practice of Judaism and early Christianity, but instead decided the Church must be fundamentally informed by tradition. Lipka comments on some unique aspects of this transformation:

In Rome - as in the rest of the Roman World - the systematic ‘spacialization’ of Christianity was virtually invented by Constantine the Great, who thus adopted the pagan practice of attributing specific space to divine concepts and applied it to his new god (clearly not only for reasons of piety).\(^\text{72}\)

But not only did Constantine allocate specific urban space to his new official cult, he also set a precedent for a new architectural type of building to make this space, the basilica. Inspired by the forms of profane civil buildings and palatial or classical hypostyle architecture, this new edificial type combined pagan traditionalism with Christian innovation.\(^\text{73}\)

In a very acute way, Constantine’s adoption and patronage of Christianity meant that the religion was being Romanized according to principles and practices which had erstwhile belonged the traditional religions of Rome. Whatever importance those religions had in the life of the state was now being transferred to Christian religion. The bureaucratic structure that already existed in the Christianity of the fourth century, with its attendant

priests and bishops ordering the lives of Christians all across the Empire, was deftly transformed by Constantine into a centrifugal Roman cult, which, as Lipka’s research supports, changed the emphasis from faith to space. In the same way Rome was the spatially located centre of the Roman Empire, now, under Constantine’s regime, so it became the centre for the Christian religion. The fact that Rome’s imperial ideal could possibly live on in the seemingly prescient presence of the Christian religion in every corner of his Empire meant that his legitimacy could be enforced through an existing framework of local governance, as Burckhardt has suggested.  

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

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

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

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74 Vide supra.
75 Lipka, Roman Gods, 188.
Empire. In the same way Nicene decisions were made to be precedent setting decisions, Constantinople was to be the precedent setting city.

**Constantine’s City**

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

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

Now the great Constantine adorned the city in many other ways and by elevating Byzantium, which previously was a bishopric of Thracian Heracleia, since it had been subjected to

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76 Zosimus, *New History*, 2.29.5, 37.
Perinthus by Severus after its capture (as is related in my treatment of Severus), to the patriarchal rank, having preserved seniority for the senior Rome on account of its senior birth and on account of his transference of the sovereignty hither from there.  

Perhaps the two most striking aspects of these passages from Zonoras are that, first, Constantine’s centerpiece for the city, the great statue of Apollo, was altered slightly to give some honour to the Christian god, and thus *prima facie* appears as a great confluence of Christianity with the empire’s pagan religious traditions and architecture. Constantine’s ameliorating actions pursuant to his new choice of Christianity as the state religion implies an attitude of toleration, and perhaps a willingness on his part to embrace both Rome’s pagan past and the burgeoning Christian faith. The second notable observation is the fact that Zonoras understands the sovereignty as having been physically transferred from Rome to Constantinople, along with the Emperor. While the sovereignty may have moved with the Emperor on this accounting, one cannot escape the fact that based on the textual evidence, Constantine in nowise intended to take the primacy away from Rome as the Christian centre. This is important to my inquiry since in the West it was the empire that ultimately fell and the religion that lasted. The West’s sovereignty, however tentative such may have been, naturally devolved on his spatially located Christian Church in Rome.

The observations from the pages of Zonoras’ history seem to confirm Lipka’s main contention that Constantine was clearly concerned about giving the official cults a geographically bounded space wherefrom they could radiate outwards with the stability and unity for which we know he so dearly longed. Constantine is recorded as having remarked a number of times that “it was necessary that the man in control spare nothing

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at all, [26] not even his own limbs themselves, to ensure the stability of public affairs."常
Constantine’s Nicene Council and his re-building of Byzantium are surely two of the
greatest examples on record of just how serious the Emperor was when it came to
stabilizing the Empire. With the foregoing in mind, it is perhaps not surprising then, that
Christianity, spacially anchored as it would continue to be due to Constantine’s efforts,
would continue to emanate and be legitimated from the two city centres which he had
helped anchor it to.

**Far More than a Gathering of Bishops**

I maintain that Nicaea was far more than a gathering of bishops. In a modern Western
society where religion means very little to very many, a gathering of bishops would
hardly attract notice; but in a culture where religion was the framework around which
people organized their lives, a gathering of multi-national religious leaders summoned by
the head of state is tantamount to a *political* conference. I suggest that this first
international conference aimed at securing a political peace was both a distant precedent
for the Peace of Westphalia and, as well, the primary historical and transformational
event which necessitated it. Notwithstanding any twenty-first century objections to the
contrary, and as Burckhardt so adeptly noted,\(^{82}\) the Christian religion in the era of Nicaea
was an organized governing body. What has to be kept in mind, as well, is the fact it was
Constantine who summoned these religious leaders to convene before him and in no
sense did the Christian religion call this conference on their own initiative. This was a
political conference with religious connotations and not the other way around.

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\(^{81}\) Zonoras, *History of Zonoras*, 13.4.25-4.26, 158.

\(^{82}\) *vide supra*. 
Nicaea was an international council of religious leaders held in a context where the practice of religions was a defining characteristic of the body politic. It also seems reasonable to suggest that while Nicaea was first occasioned by the internecine conflict arising out of dogma in the vast Christian Church, by the time the crisis progressed to the point that Constantine decided to call the council, it seems it was the decision of a calculating emperor looking to guarantee consolidated power rather than an effusion of Christian enthusiasm. With these considerations in mind, I suggest Nicaea is better understood as a multi-national political forum which inextricably set Europe on a course towards the era of the universal powers, and hence, Westphalia.

**Nicaea, Westphalia, and Sovereignty**

Sovereignty is a concept whose theoretical lineage is steeped in the idea that to be effective it must be both moral and coercive. In noting this, perhaps naturally, I mean morally and coercively executed for the benefit of the *civitas* and not the opposite. In a fundamentally unbroken nexus from Socrates to Hobbes, thinkers have long contended that humankind’s fundamental flaws, whether arising from unfamiliarity with the “good” or from “original sin”, were so fatal that sovereign governance over citizens of a *polis* must be facilitated *via* a coercive regime. These same political theorists, and here I refer specifically to any important thinker who has contributed to the “great conversation” pursuant to civil administration in so far as it concerns the European branch of such thought, have also insisted that this coercive sovereignty must ultimately be for the benefit of those citizens who make up the state. Put simply, political theorists have maintained that citizens on their own are not capable of self-governance and require some form of paternalistic leadership.
Further, the emergence of state sovereignty is an idea which is supposedly intimately connected with the Peace of Westphalia in 1648. This research recognizes that there are a variety of opinions on the solvency of such a claim, but assuming that the treaties of Münster and Osnabrüg were important to the development of state sovereignty, this research suggests that an important precedent which necessitated the onset of Westphalia happened thirteen-hundred years earlier at the Council of Nicaea. Thirteen-hundred years is a massive swath of history, but the twenty-one inter-regional Christian Church councils which took place at various points along this historical trajectory may provide the sovereignty discourse with more food for thought as to how Westphalia came about in the first place. In other words, what were the constitutional and conciliar precedents which brought states together at Westphalia to break the ubiquitous cultural and partly political hold which the Roman Church had over the imperial states within Germany? I note that this connection between Church and State was first born at Nicaea, and that just as Constantine represented the real political power at the first conference of bishops, so the representatives of France and Sweden took on a similar role at the treaty tables of Westphalia. France and its allies were now wrestling back a similar role of raw political power, however coloured it was with Christian pretext, and thus this event had more certainly set a new trajectory away from universal powers and towards true state and territorial sovereignty.

I suggest that the Council of Nicaea in 325 C.E. was a trajectory-setting event in the nexus of transactions which brought the Roman Church into a place of barely veiled state

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83 The Articles of the Treaty of Peace, Sign’d and Seal’d at Munster, in Westphalia, October the 24th, 1648, in A General Collection of Treatys, Declarations of War, Manifestos, and other Publick Papers, Relating to Peace and War, Among the Potentates of Europe, from 1648 to the present Time (London: Printed by J. Darby for Andrew Bell in Cornhill, and E. Sanger at the Post-house in FleetStreet, 1710), Treaty Opening, 2.
sovereignty by the sixth century. Based on the extant texts and their corroborative
evidence, some of the key ones having been noted above, I agree with Burckhardt’s
emphasis on the political organization and power of the Christian Church even just prior
to Constantine’s Nicaea. I further suggest that, in raw terms of power and authority, the
Church’s sovereignty was not so much conceived at Nicaea as it was born. After the sixth
century transfer of political control which was necessitated by Rome’s fall at the hands of
the barbarians, along with their antecedent imperial exodus to Constantinople, the Roman
Church was essentially left alone to politically rebuild Europe with the, then, nascent
universal power of the Frankish kings. Without wanting to over generalize, it is a
commonly known fact that for the intervening period between the two landmark events of
Nicaea and Westphalia, the two universal powers of Church and Emperor shared the
sovereign territorial control of Europe, and the relative intensity of such control varied
concomitant to the relative clout of one vis-à-vis the other. Of course, in the latter half of
this time period, it was not merely the emperor but a whole array of regional dignitaries
representing geographical areas who participated in exercising power over both people
and place. Yet for this research, the important observation is that the Church was a key
component of sovereign rule in Europe from Pope Gregory the Great, 540-604 C.E.,
until, at least, the Peace of Westphalia in 1648.
A Discussion on the Theoretical Development of the Notion of Sovereignty

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

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

… περί τε τῆς ἀρχῆς καὶ περί τῆς πόλεως, καὶ διὰ μάχης ἐχώρησαν, ἐν ἡ ὁ Ῥώμος ἀπέθανεν….

*Zonaras 7,3, Dio’s Roman History*

From King Hammurabi to the present day, the notion of sovereignty has always been associated with power. The ancient Babylonian King, who bequeathed history with one of the first known written codes of law, was specific to mention in his code exactly who it was who underwrote the sovereignty, and importantly, for his own legitimacy, who executed it. Almost one millennium after Hammurabi of the eighteenth century B.C.E., in the eighth century, we learn from the historian Zonaras that sovereignty, specifically the question of who should wield such, was the cause of Remus’ death at the hands of his twin brother Romulus. It seems that in the minds of the two founding brothers of Rome, ultimate authority could not rest in the hands of both and thus it ultimately rested with one. Yet Rome’s history shows that such an arrangement was unsatisfactory to many of its citizens, and in time kings were replaced with a republican scheme, which was, itself, subsequently vanquished by an imperial system of governance. I note here, though, that sovereign authority in all these circumstances, devolved as it had on various arrangements of interested parties, never wholly moved beyond the class and religious

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84. “[Romulus and Remus disputed] about the sovereignty and the city, and they got into a conflict in which Remus was killed.” *Zonaras 7,3, Dio’s Roman History*, trans. Earnest Cary (London: William Heinemann, 1914), Book I, 17.
interests which characterized the lives of its executors. In other words, from Hammurabi to Hadrian, and even on past to the Hapsburgs, the only affective benefactor of sovereignty was, at least in theory, the deity. In societies where religion was the fundamental framework of daily life for all classes, rulers, for the sake of legitimacy, had to acknowledge that it was the God or ‘the gods’ who had bequeathed their sovereignty. In this context sovereignty was never corporately or individually understood as solely attached to either the will or skill of personages.

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

duplex et reciprocum legamen; quia sicut subditus regi tenetur ad obedientiam, ita rex
subdito tenetur ad protectionem: merito igitur ligeantia dicitur a ligando, quia continet in se
duplex ligamen.85

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

**Sovereignty’s First Raconteur: Jean Bodin**

The keystone event which served as the impetus for all these fluctuations in political
ideology and practice was the Protestant Reformation, which although it had begun
centuries earlier with John Wyclif and Jan Hus, was now in full bloom in the fifteenth
century pursuant to Martin Luther and his engagement with a corrupt and recalcitrant
Roman Catholic Church. Coming on the heels of Martin Luther, and in the midst of the
reformation’s continuing upheavals, was sovereignty’s first raconteur, the French
political commentator and attendant of the royal court, Jean Bodin (1530-1596 C.E.).
This early modern thinker’s attempt to tackle the idea of sovereignty was essentially
driven by his desire to put his French King “at the apex of the pyramid of authority.”86
Bodin was a member of the Catholic Church and wrote under a Catholic King, but it is
suspected that his true religious commitments were much closer to Judaism and neo-

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85 *Calvin's Case*, ER 77, (1608) Coke 7, 382.
Platonism. Notwithstanding the conjecture on his genuine religious sentiments, we are left with the historical fact that Bodin wrote to curry favour with the, then, new Catholic monarch, King Henri III, and it cannot be too surprising that his definition of sovereignty should fall most favourably to this same king. In his most famous work, *Les six Livres de la Republique*, Bodin wrote:

Sovereignty is the absolute and perpetual power of a commonwealth…

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

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

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

This same power of making and repealing law includes all the other rights and prerogatives of sovereignty, so that strictly speaking we can say that there is only this one prerogative of sovereignty, inasmuch as all the other rights are comprehended in it – such as declaring war or making peace; hearing appeals in the last instance from the judgments of any magistrate; instituting and removing the highest officers; imposing taxes and aids on subjects or exempting them; granting pardons and dispensations against the rigor of the law; determining the name, value, and measure of the coinage; requiring subjects and liege vassals to swear that they will be loyal without exception to the person to whom their oath is owed.

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89 Reign: 1574-1589.
90 Hereinafter, ‘Six Books,’ (Beaulac, ft. 48, 9). The English translation used in this study is from Julian H. Franklin’s *Jean Bodin: On Sovereignty*. English translations of this work appeared in 1606 from Richard Knolles and then M.J. Tooley in 1955, but according to Franklin both contain fundamental flaws arising from selectivity as well as lack of scholarly rigour (Franklin, xxxv). Franklin’s translation is based on the French edition of 1583 from Jacques du Puys, and it is has been used as the master text for translations into German and Italian, and is the one commonly used by scholars (Franklin, xxxv-xxxxiii).
These are the true prerogatives of sovereignty, which are included in the power to give law to all in general and each in particular, and not to receive law from anyone but God.\textsuperscript{95}

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

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

J.H.M. Salmon notes:

Bodin held back from making the legislative sovereign prince truly absolute, or free from any restraint. He was bound to observe Divine and natural law, although no human agency could force him to obey the commands of God and the principles of moral justice. While he was not obliged to fulfil his promises, any more than he was to observe his own laws of those of his

\textsuperscript{95} Bodin, \textit{Six Books}, Franklin, 1.10.223-224, 59.
predecessors, he had to respect the covenants he made with his subjects, although he was the final judge of the equity of a covenant and of the time when it ceased to be binding because it no longer served the interest of the other party. Yet the sovereign could not change the fundamental or constitutional laws: ‘Touching the laws which concern the state of the realm and the establishing thereof, forasmuch as they are annexed and united to the crown, the prince cannot derogate from them, such as is the law Salic.’

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

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

Bodin wrote his treatise on sovereignty just as the fissures in the great wall of Catholic Christendom’s ideological and political hold on Europe were becoming too large to ignore. Bodin had arrived on the heels of reformers like Erasmus (1469-1536 C.E.) and Martin Luther, and was a contemporary of Jean Calvin (1509-1564). It seems

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100 Ibid., 471.
likely that Bodin saw the writing on the wall concerning the end of Christendom, and though he does not sever his ties to the Church, his *Six Books* were clearly drafted such that sovereignty’s main players were God and the king, purposely giving short shrift to the weakened titular entities of pope and emperor.\(^{101}\)

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

> From a historical-theoretical perspective, therefore, Bodin’s more absolutist theory of sovereignty appears not just as a reaction to circumstances, but also as his final solution to the problem of a highly secularized and changing temporal world. Once he decided that there was no universal law underlying the various laws of different peoples, he asserted his idea of absolute legislative sovereignty to serve as a new universal foundation of law and politics. He claimed the sovereign was a point of divine and natural right placed upon earth to impose order upon the otherwise corrupt and mutable social life of human beings.\(^{102}\)

Bodin understood a God-ordained status for the king which was in keeping with both the God of the Jewish Scriptures, aka the Old Testament, and Pauline Christianity, both of

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

Stéphane Beaulac also notes that with Bodin we are dealing with a definition of sovereignty aimed at the *internal* organization of a society, whereas with a later thinker like Emerich de Vattel (1714-1767 C.E.), the transmutation of the idea of sovereignty was then applied to the *external* and international community of nations. Beaulac’s assessment of Bodin’s sovereignty leads him to suggest that sovereignty is a word that is subject to changes in its nature and effects over time, and the lineal bifurcation in

103 1 Samuel 8:7 reads: “and the LORD said to Samuel, ‘Listen to the voice of the people in all that they say to you; for they have not rejected you, but they have rejected me from being king over them.’”; The Apostle Paul’s letter to the Romans 13:1-4 reads “Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore whoever resists authority resists what God has appointed, and those who resist will incur judgement. For rulers are not a terror to good conduct, but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval; for it is God’s servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain!” (NRSV: Anglicized Edition, 1989).


105 Beaulac, *Bodin’s Sovereignty*, 27.
meaning pursuant to its internal and external manifestations bears this out clearly.\textsuperscript{106} With this in mind, it may then be unrealistic to expect the word sovereignty to “settle” into a set definition either now or at any point in the future.

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

**More Recent Assessment on Sovereignty**

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

Lassa Oppenheim, *International Law: a treatise*

Lassa Oppenheim’s characterization of the general puzzlement which the notion of sovereignty had caused was not unwarranted in his own time in the nineteenth century, and it is certainly apropos now.\textsuperscript{107} A veritable ebullition of opinions and critiques have recently been – and by recently, I mean the last fifty years – aimed squarely at the idea of sovereignty;\textsuperscript{108} yet, through it all, Oppenheim’s lament remains the presiding sentiment.

There seems to be a tension over whether sovereignty should remain the same, be re-

\textsuperscript{106} Beaulac, *Bodin’s Sovereignty*, 27.
envisioned, or scrapped altogether.\textsuperscript{109} It seems sovereignty as a solvent and acceptable concept is something which has yet to arrive, and perhaps the politics attached to both sides of the debate will insure that it never will. Sovereignty as an idea now seems to be “under construction,” in a manner of speaking, and yet it may be that such a state of being will turn out to be its most dangerous incarnation. The transformation of sovereignty that Beaulac highlighted from Bodin to Vattel took two-hundred years and was the result of monumental societal changes, but the current status for theoretical sovereignty is a far more mutable state of being. One of the problems for both practical and theoretical sovereignty may be that with no set definition it will be very hard to either regulate or criticize, precisely because it remains in flux. Yet, even in light of the difficulties, it seems that so long as sovereignty continues to be used by statespersons engaged in international legal relationships, what it means in that context must be of some import, even if there is ultimately room for improvement.

**Hinsley’s Axiom**

Sovereignty scholar F.H. Hinsley has indicated in his work that this is precisely the case. As indicated in the historical references already alluded to, Hinsley wrote that sovereignty was long understood as being the only unqualified authority within a political system,\textsuperscript{110} and that it became an idea which people used to strengthen older forms of legitimation or tailored it in new ways on the way to converting their raw authority into

\textsuperscript{109} Martin Loughlin, “Ten Tenets of Sovereignty,” *Sovereignty in Transition*, ed. Neil Walker (Portland: Hart, 2003), 55; Jens Bartelson, *The Critique of the State* (Cambridge: Cambridge University Press, 2001), 1, 161-165. He writes (p. 164) ‘According to Walker, the most important expression of the limit of political imagination is the principle of state sovereignty. Its importance derives from the fact that state sovereignty is thoroughly constitutive of the modern political order and yet is itself constituted in and through political discourse… Within this view, the sovereign state enjoys no existence outside the discursive practices of international relations.’

\textsuperscript{110} Hinsley, *Sovereignty*, 1.
He also poignantly noted that so long as the definition ends with “and no final and absolute authority exists elsewhere,” sovereignty could be satisfactorily defined.\textsuperscript{112} Hinsley’s apologetic treatise on sovereignty rests on the axiom that the modern complexity of human society demands a functional understanding of sovereign governance, notwithstanding criticisms to the contrary.\textsuperscript{113} He writes:

The concept of the sovereignty of the ruler was at the outset an essential ingredient of these theories for a good reason. When it became one essential feature of political society, this division of power or this collaboration of forces did not dim the importance of another – the need to ensure the effective exercise of power. The function of the concept of sovereignty was to provide the only possible compromise formula by which this primary need could still be met despite the development of this unavoidable association. As the community became still more complex the concept of the sovereignty of the ruler was challenged by the thesis of the sovereignty of the people and even, later, by the thesis that the state was dispensable. These arguments could not meet this primary need, however, the more so as the growing complexity of the community was only serving to emphasize the importance of the state. On both of these accounts the only recourse was to preserve sovereignty in the society by tightening still further the association between the state and the community at the expense of incurring greater complexity also in the character, the forms and procedures and the conception of the state. It is safe to say that, far from seeking to destroy it, the central developments of modern times in that direction – the rise of legislatures, the extension of suffrages, the introduction of representation and the insertion of constitutional features into the composition or the basis of executive organs – have been produced by the fundamental need to preserve the sovereignty of the state, as the pre-condition of effective action in and by the community, against the growth in modern political societies of other imperative but nevertheless less basic needs.\textsuperscript{114}

Of course, premised as all these changes of the Modern and Post-modern period were on the antecedent Protestant Reformation and rise of humanism, Hinsley’s axiom must, then, be altered somewhat to acknowledge that it is not the mere complexity of society which required the need for a functional understanding of sovereign governance, but a complexity which is based on the need to protect and preserve those fundamental human freedoms and rights which were the epicentre of the struggles which ultimately necessitated such complexities in the first place.

\textsuperscript{111} Hinsley, \textit{Sovereignty}, 25.
\textsuperscript{112} Hinsley, \textit{Sovereignty}, 26.
\textsuperscript{113} Hinsley, \textit{Sovereignty}, 233-235.
\textsuperscript{114} Hinsley, \textit{Sovereignty}, 233-234.
In other words, just as with the Greek conception wherein sovereignty was thought only to rest in a, first, morally centered, and then, second, coercive framework, it was the attendant positive consequences for the *polis* in general which were the *sin qua non* consideration which justified such paternal measures. In a somewhat similar way, it seems that the same positive consequences were demanded by the peoples of Europe in their march towards the state enforcement and protection of human rights. Merely citing societal complexity as a justification for the sovereign exercise of power would be leaving aside the very heart of what the Early Modern and Modern revolutions in thought and culture stood for.

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

> It is the ability of the theory of sovereignty to do this – to integrate into a meaningful complex a large number of distinct categories, such as coercive power, community, obligation, legitimacy, and authority – which determines the ‘meaning’ of sovereignty: not some normative statement that holds true of only one particular society, or some empirical observation about a single element in the sovereignty concept.\(^{115}\)

Here again, it is the facilitation of the simultaneous functionality of the variegated aspects of state organization which is alleged to hold sovereignty together. Both Hinsley and Stankiewicz comment on the role which the complexity of human relations played in the growth of state sovereignty. Yet the complexities both of these scholars refer to, in so far as they include the advancement of human rights in the Modern and Post-modern eras, were ones which were laden with morally positive content and outcomes. Some of the burgeoning complexities may have had little to do with human rights, such as the growth of cities and the industrial revolution, but when we look at the transformation of legal

instruments and the vast changes in functional political structures in the course of the latter half of the second millennium of the Common Era, we see that the general direction for both these phenomena were towards a greater protection of human and political rights for the people living in these nascent states. From the *Magna Carta* to the Protestant Reformation, and on to the revolutionary wars of the modern period, the orientation of these events was ultimately about the rights of people, however obfuscated the individual events were by the egos of kings, popes, and generals.

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

That there shall be a Christian and Universal Peace, and a perpetual, true, and sincere Amity, between his Sacred Imperial Majesty, and his most Christian Majesty; as also, between all and each of the Allies, and Adherents of his said Imperial Majesty, the house of Austria, and its Heirs, and Successors; but chiefly between the Electors, Princes, and States of the Empire on the one side; and all and each of the Allies of his said Christian Majesty, and all their Heirs and Successors, chiefly between the most Serene Queen and Kingdom of Swedeland, the Electors respectively, the Princes and States of the Empire, on the other Part. That this peace and Amity be observ’d and cultivated with such a Sincerity and Zeal, that each Party shall endeavour to procure the Benefit, Honour and Advantage of the other; that thus on all sides they may see this Peace and Friendship in the Roman Empire, and the kingdom of France flourish, by entertaining a good and faithful Neighbourhood.

Article 1, Treaty of Münster
October 24, 1648

What is fundamentally germane in this opening Article to the importance of the Peace of Westphalia for the development of a system of sovereign states in Europe is the clear recognition of two entities, vis-à-vis one; which had been the status quo up until then. The King of France, styled the “most Christian Majesty,” was here apposed to the Emperor of the so-called “Roman Empire.” Here, though, the French King is placed on an equal footing with the Holy Roman Emperor, which highlights the re-distribution of sovereignty which was taking place.

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

Leo Gross, in his seminal work on Westphalia, emphasized that The Thirty Years’ War was born out of religious conflict and that the Peace of Westphalia established a far

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reaching and international guarantee aimed at securing religious equality for the
Protestant and Catholic states within Europe. The peculiar note here is that both sides
claimed to be the Christian religion, and based their claims on much the same kind of
dogmatically driven concerns which characterized the Arian split, but which, in this case,
had overwhelming political and military implications attached to them. Gross also points
to the importance of the peace guarantee itself, specifically the fact that all parties were
required to defend it against all others, regardless of which side of Christianity they were
on. Westphalia was a step towards a constitutional Europe wherein all adherents were
expected to vouchsafe the terms by intervening in case of a breach. As much as the two
treaties were the beginning of international recognition and mutual obligation between
states, it is fundamentally important to appreciate that the context for such correlatives
were rooted in the religious divide that existed in Christian Europe. If sovereignty did
emerge here at Westphalia, it must be conceded that it was a religiously charged
sovereignty. It was, at its core, a right to rule over one’s own religious affairs with
impunity.

Although the great war of the seventeenth century began due to a religious divide, the
key implications of its subsequent peace for the development of the international legal
system seems to have been more grounded in its tendency to recognize republican states,
regardless of their religion. I would suggest that in the same way Nicaea set the
Christian Church on a trajectory for statehood and sovereignty, so Westphalia set the

119 David Jayne Hill, A History of Diplomacy in the International Development of Europe, Vol. II,
nations of Europe on a trajectory for individual state sovereignty. Nicaea was an experiment in homogeneity: Westphalia, an experiment in heterogeneity. Westphalia was the constitutional act which represented Europe’s emergence from an era of universal powers to the era of republican states: and I suggest the former had begun at Nicaea. If Westphalia was the death of the universal reign, then the Council of Nicaea was its birth.

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

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

The combined impact of these centrifugal forces could not, in the long run, be resisted solely by the writings of the defenders of their authority. To maintain the claims it would have been necessary to display a real overpowering authority. Neither the Pope nor the Emperor, however, was at that time in the position to restrain effectively the centrifugal tendencies. No longer was there any Constantine figure to bring to bear any kind of overpowering authority to settle disputes intrinsically grounded in dogma. Constantine’s state Church had by then grown far beyond any of its own deontological justifications into the shared

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governance of Europe. What had begun, at least where the Church was concerned, as a struggle for monopoly on doctrine at Nicaea ended in perhaps a similar way with a war over another dogmatic divide between the Catholics and the Protestants. In both cases, interestingly, it was the political governing power that first showed the Church the door into a place of sovereign power, and ultimately showed them the way out, as well.

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

The Holy Roman Empire did not cease to exist in practice or in theory in 1648. Had it been abolished, one could argue that the peace of Westphalia legitimized the de facto independence of the German princes, and thus took a demonstrable step towards the formal recognition of sovereignty. The estates continued after 1648, to think of themselves as a single body.\footnote{Derek Croxton, “The Peace of Westphalia of 1648 and the Origins of Sovereignty,” \textit{The International History Review}, 21.3 (Sept. 1999): 574.}

The process of undoing the Church and Emperor’s power had certainly not reached any end-game by the time of Westphalia, but it cannot be doubted either that with the end of the war and Europe decimated, that things were never going to be the same again. Croxton rightly points out that even Pope Urban VIII, who helped organize the Westphalian congress, refused to act as arbitrator and gave instructions for the papal nuncio not to make any proposals.\footnote{Croxton, \textit{Westphalia and the Origins of Sovereignty}, 572.} Croxton insists that too much has been attributed to Westphalia as some lineally placed panacea which birthed the modern state system\footnote{Croxton writes: A great deal of creativity is required to attribute sovereignty to the peace of Westphalia in the way scholars have traditionally done. It is more reasonable to treat the negotiations at the congress (as opposed to the treaties that followed) as an important and identifiable stage in the evolution of the states system towards sovereignty. Nobody began or even ended the negotiations at Westphalia with the idea of creating an international system of sovereign, independent states. Many, however, wished to protect their own sovereignty (Croxton, \textit{Westphalia and the Origins of Sovereignty}, 588-589).} and
such an observation seems reasonable in a prima facie way. It seems a classic case of taking too little to mean too much. But perhaps, in terms of what my own research aims to do and with a more robust consideration of context, there is the rub.

Westphalia looks, at one level, like merely a treaty between two Protestant kings and a Catholic Holy Roman Emperor. But as Gross pointed out, and as the Treaties themselves reveal, Imperial German states having a free hand to choose their own version of Christianity was a marked change from the status quo. In an era where one’s religion was meted out on your heretical brethren with swords and bloodshed, and wherein religions were demarcated in a real sense by physical “sovereign” borders, such a release of power as this was sovereignty itself changing hands. Croxton is right that the state system which emerged much later was not present or even considered at Westphalia,\(^\text{127}\) and perhaps the contextual exigencies pursuant to the rebuilding process after the war would have made that impossible in any event. Yet simply because the individual imperial German states did not infer an international system of equal nation states based on their behaviour immediately following the congress, does not then mean that the decisiveness of the legislated international treaty meant any less in the long run to Europe’s organization of states.

Words were very important to popes and emperors in Europe and had been since the inception of the Christian religion. One only has to look at the legislated enactments of the Church councils, beginning with Nicaea, to understand how much words meant to them. Here at Westphalia, all the brutish invective which had been characteristic of conciliar documents against heretics from Arius to Luther, all the violent acts which had been based on mere ‘words,’ had finally met a more formidable opponent than

themselves. What they met was a concord between nations that their illimitable rule, ostensible or not, was at its end. Westphalia marks the occasion of two legislated documents which disenfranchised the Church and Emperor of a significant amount of political power, and thus by definition, sovereignty.

**Wayne Hudson and Possibilities for Sovereignty**

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

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

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

As my own comparative constructivist technique hopes to accomplish, Hudson’s approach is also pointedly more concerned with making historical inquiry the hand-

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maiden of progress, rather than the other way around. Moving the idea of sovereignty from a place of homogeneity to a place of heterogeneity pursuant to its genesis as a “solvent” institutionalizing concept may provide a more robust and morally-centered possibilities for future international arrangements.

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

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evidence enough of just how large a role religion can play, and does play. In states where religion is considered by the majority of people as being far more important that politics, gatherings of a religious nature become de facto political. This research suggests that Nicaea was exactly such a gathering.

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

Western political theory has tended to minimize the importance of religion in political and legal contexts. Indeed, many writers on politics assume that religion has no legitimate role. In civilized societies, they assume, religion will either die out or become so emasculated that it can be ignored for most practical purposes. It may play a symbolic role in times of crisis and ornament public funerals, but it has nothing substantive to contribute to the management of the state. This is a very narrow and short-sighted view, and one that takes little account of the role of religion in the Islamic world, in India, in Russia or in Catholic countries such as the Philippines.135

In today’s context of religious diversity management and a worldwide increase in religious adherents, Hudson asks whether the sovereignty/religious governance relationship might be recast as discourse encouraging the social recognition of difference and thus be “constitutive of future legal positivities.”136

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

135 Hudson, Fables of Sovereignty, 30.
sects and the “Christian” West. In keeping with the observation above on the changing of the political guard in the West, from religion in ancient times to the modern lionization of finance, so the world is faced today with an oil rich Islamic Middle East which supplies a great deal of the world’s oil needs and therefore has been, and continues to be, the site of the tragically obtrusive military conflicts of recent memory.

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

In such a tense and tenuous international environment, it would seem that respect of religious and cultural differences and priorities in the construction of a new notion of sovereignty are paramount pursuant to any chance it might have at being widely adopted. Why other regions of the world should have to countenance and embrace a definition of sovereignty which stems from a Christian era wherein human beings were routinely tortured and killed in maliciously brutal ways, amongst other devastating events such as the almost continual state of war, is a fact which must come across as woefully ignorant, regardless of how mollified the modern “definition” may have become. It would seem that given the concomitant strength and growth rate of Islam along with Christianity’s place as the largest religion, any future arrangement of sovereign states and the assignment of the status of “sovereign” amongst states will have to be borne out of a
constitutional apparatus which satisfies both sides of this religious equation. Perhaps a corollary to this observation might be the caution that if an arrangement of international sovereign states does become a reality based on the assent of the Islamic nations and their Judeo-Christian counterparts, the other religions and cultures of the world should not be left to one side merely because they have neither the numbers or the financial clout to be heard. I suggest that such a tack would only be repeating the same mistake made by the two religions in question, and mistakes which cost the world millions upon millions of human lives.

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

**Conclusion**

This present research is not concerned with crafting a nuanced definition of sovereignty based on the host of disparate suggestions, many of which now lay wounded
by the side of the hermeneutical road of international legal theory. Instead, this research suggests that the very internal sovereignty which characterized the Late Antiquity Roman Empire\textsuperscript{137} was, itself, bequeathed to the Christian Church at Nicaea by fiat. In other words, this research is suggesting a starting point for the development of European sovereignty at which Europe’s most enduring institution of eighteen-hundred plus years was the main actor: the Roman Catholic Church. Constantine’s fourth century Council and its attendant corollaries of expanded and enforced jurisdiction and wealth for the Church meant that when the Empire finally shuffled East due to the Barbarian assaults on its erstwhile centrifugal city of Rome, the Church was left to pick up the gauntlet, so to speak, and stepped into the sovereignty vacuum left by the sudden absence of the Roman bureaucratic apparatus. Centuries later, when the states of Europe finally emerged with their own version of sovereignty, both internally and externally, the nations states were taking back the same gauntlet which the Christian Church and emperor were ultimately unable to defend.

I have cast the beginning of this research by showing that sovereignty was, for centuries past, always justified by deontological considerations. In fact, it is interesting to note that historically, theorists in general really tend to come out of the woodwork, as it were, whenever their society or paradigm is crumbling before their very eyes. This could be said of Plato, Aristotle, Cicero, Augustine, and most pointedly for this research, the political theorists of the cataclysmic Modern Period such as Jean Bodin and a host of others. Perhaps in some way these written works are in some way trying to explain the tragic events while attempting to maintain the core of their widely held beliefs which, in most cases, actually led to the catastrophes. In some sense these theorists may be

\textsuperscript{137} Hinsley, \textit{Concept of Sovereignty}, 276.
unconsciously trying to account for their own commitment to these flawed world-views. Their paradigms were, perhaps, still very important to them and their writings are a way of saying, basically, ‘while I do not reject the essential truth of my worldview, I cannot endure the tragic consequences which it seems to have produced and so I must reconfigure it with hopes that greater order and civility amongst people will be the result.’ Order was the lynchpin aim of all of these theorists, primarily because they lived in contexts of such fundamental disorder. Each of their contributions was an attempt to move the conversation forward such that it would be more effective at “street level,” and each of them gave as their guarantor, the deity. Concomitant with the sponsorship of the deity was an assumption that political order stemming from this entity would be as good as the God who delivered it.

Not until the last two centuries has the idea of sovereignty been alone propped up by tenets such as interstate recognition, definable territory, and a population, all of which are ideas that are devoid of any stipulative moral content. Sovereign power was always defined in terms of the moral prerogative, and not merely a grocery list of state attributes which fail to insist on any requirement that state sovereignty must also be concomitantly ethical or humane. Of course, as was the case with Europe in the seventeenth century, the fact that contextually necessitated definitions of sovereignty were justified in terms of moral rightness, had no effect on the disastrous outcomes of wars waged by those claiming sovereignty. The same could be said for the Greeks and Romans as well. One might argue that state sovereignty, as a theoretical construct, has never prevented a war or saved one single life, and unless some kind of moral imperative is attached to its designation on states, it may never do. On the other hand, one might alternatively suggest
that even in its most brutal and ancient forms, internal sovereign power provided order and some measure of predictability pursuant to the everyday lives of people within states. In that way, then, sovereignty did indeed save lives by acting as a guarantor against lawlessness.

My intent is to now move ahead further in this line of research with specific attention to the Westphalian concord, in an effort to compliment this research and, by so doing, better understand the etymological foundations for our modern understanding of sovereignty. My hope is that this present research helps better contextually color in some of the details pursuant to sovereignty’s history in order to add positively to the larger conversation, already in process, in regard to sovereignty.