

The Origins of Westphalian Sovereignty

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In Prague in 1618, religious tensions within the Holy Roman Empire reached a breaking point, as a group of Protestants tried three Catholics for violating Protestant rights to religious freedom, found them guilty, and threw them out of a window. This action plunged Europe into a destructive war that lasted for thirty years. The Thirty Years' War involved nearly every major nation in Europe, and is often referred to by scholars as the first "world" war. The war that began as a conflict between Protestants and Catholics became something bigger, as Catholic France took the side of the German Protestants against the also-Catholic Habsburgs. The governments of Sweden and Denmark, while claiming to be fighting for the ideals of Protestantism, also saw the War as an opportunity to gain land. Spain, ruled by a branch of the Habsburg family, joined the war to protect her interest in the Spanish Netherlands. Much of the fighting took place within the Holy Roman Empire, and the number of casualties made the Thirty Years' War the most destructive of the religious conflicts of the sixteenth and seventeenth centuries.

Three treaties- the Treaty of Osnabruck, the Treaty of Munster, and the Treaty of the Pyrenees- ended the war in 1648, and according to traditional history, changed the way nation-states interacted with each other forever. International relations scholars (political scientists) have traditionally regarded the Peace of Westphalia as a set of revolutionary documents; creating a new wave of nationalism in Europe and redefining what it meant to be an independent nation. Indeed, the Peace of Westphalia is so strongly associated

with this model of the nation-state that today's international relations scholars refer to the current model of nations as "Westphalian sovereignty" and describe modern society as living under the "Westphalian system."¹ However, the Peace of Westphalia did not intend to redefine international relations, and the evidence suggests that the Peace of Westphalia was not a metaphorical "switch" that toggled on and gave Europe a new structure overnight, nor did the treaties that comprise the Peace of Westphalia ever profess to have any purpose other than ending the war. The ideals that comprise Westphalian sovereignty had already started to form five hundred years before the Thirty Years' War during the conflicts between secular rulers and the Papacy; the Peace of Westphalia was merely one of many examples of secular rulers increasing their own strength. The Peace of Westphalia simply took a pre-existing set of concepts and established them between nations, rather between nations and the Papacy. After 1648, due to the prevalence of Protestantism the Papacy lost a great deal of its secular influence. Even the rulers who remained Catholic found that they did not have to obey the Papacy nearly as closely as they had before.

Definitions

A Westphalian nation-state has two main characteristics: a specific area of land which is considered part of the nation, called territoriality, and a ruling structure that has the ultimate power to rule over the nation without yielding to

¹ Leo Gross. "The Peace of Westphalia: 1648-1948," *The American Journal of International Law*, 42, No. 1. (Jan., 1948): 23.

any external agency.² The latter provision is especially important; to be a sovereign nation, authority cannot come from outside the state. Conversely, the authority of a Westphalian nation-state is limited to the boundaries that define the nation's territory. This concept is called territorial integrity, and is an important aspect of relations between two Westphalian nation-states.³

Historiography

Scholars, both in the field of history as well as the field of international relations, have examined the Peace of Westphalia and its relation to the origins of Westphalian sovereignty. Interpretations vary widely; although the positions can be simplified into traditional interpretations and revisionist interpretations. The traditional view states that Westphalian sovereignty is the direct result of the Peace of Westphalia, and that without the Peace of Westphalia, the modern nation-state would never have come to be. The revisionist interpretations reject the traditional view; downplaying the importance of the Peace of Westphalia in the formation of the concept of Westphalian sovereignty. Paradoxically, revisionist historians have approached the topic with two seemingly irreconcilable views: 1) Westphalian sovereignty already existed prior to the Peace of Westphalia, and 2) Westphalian sovereignty did not become the norm for international relations until well after the end of the Thirty Years' war.

² James A Caporaso. "Changes in the Westphalian Order: Territory, Public Authority, and Sovereignty". *International Studies Review*, 2000: 15.

³ Caporaso, 16.

These conclusions come from varying interpretations of what exactly the treaties that comprise the Peace of Westphalia mean.

Leo Gross explores the traditional view of the Peace of Westphalia, which has held that the Peace was the starting point in the development of nations. According to Leo Gross, the Peace of Westphalia did indeed usher in an age of nation-states. With the Pope's power waning after 1648, the monarchs of Europe were forced to redefine their relationships with each other.⁴ As Gross put it, the key aspects of the Peace of Westphalia were the concept of sovereignty and the agreement to non-interference in the internal matters of other states. In recognizing sovereignty, each ruler agreed that while there were no equals to the ruler inside the kingdom, there were no superiors outside of the borders.⁵ Gross states that the Peace of Westphalia is directly responsible for the doctrine of Westphalian sovereignty.

In The Peace of Westphalia: 1648-1948, Gross examines primary sources such as the Treaty of Munster and the Treaty of Osnabruck which made up the Peace of Westphalia.⁶ However, Gross does not focus on the literal text of the treaties, instead arguing that the origins of Westphalian sovereignty are implied. This suggests that the rise of Westphalian sovereignty was not intentional. Gross also examines documents from different time periods such as the Treaty of Verdun in 843, the settlement of Vienna in 1815, and various other points

⁴ Gross, 26.

⁵ Gross, 32

⁶ Gross, 41

through history in order to compare the Westphalian Era to other times.⁷ Gross finds that the Treaty of Verdun focused on the individual leaders instead of the states that were created, which is a pre-Westphalian view. The Congress of Vienna, by contrast, is cited as a model of Westphalian states working together.⁸

The traditional view is echoed, in part, by Josef Polisensky, a Czech historian who specializes in the history of the Thirty Years' War. In The Thirty Years War, Polisensky agrees that the Peace of Westphalia in 1648 was a significant year for nations, and for many of the same reasons as Gross. For starters, Polisensky notes that the territorial changes established by the Peace of Westphalia remained largely intact until the Holy Roman Empire collapsed in 1806.⁹ This is a stark contrast to earlier periods in European history when national borders fluctuated depending on what noble House was currently in power. The lack of change suggests to Polisensky that the post-Westphalian rulers had more control over their lands, lending credence to the doctrine of territorial integrity.

One of the most poignant statements made by Polisensky is:

...the Thirty Years War meant the completion of one stage in the process of world history, and that Westphalia inaugurated an era where this history becomes effectively a unitary one involving the whole continent of Europe and the overseas dependencies of maritime powers.¹⁰

⁷ Gross, 37

⁸ Gross, 37

⁹ Polisensky, Josef. The Thirty Years War. University of California Press. (Berkeley, 1971) Page 255.

¹⁰ Polisensky, 257.

Polisensky points out that the Thirty Years War had affected all of Europe, with the exception of the Ottoman-controlled territories in the southeastern corner.¹¹ At various points in the War almost every nation had to choose one of the two sides, although some nations switched in the middle of the war.¹² This corresponded with an increase in nationalism; citizens began to think of their country in relation to the other European countries. This is an important step in the development of nationalism, and governments were later able to use these feelings among the populace to strengthen sovereignty within their borders. In addition, the amount of active diplomacy and economic aid occurring over the duration of the war was significant; the various subsidies were emblematic of the rise of a world market, and with it, the shift from mercantilism to nationalism.¹³

While Polisensky and Gross both agree that 1648 was a milestone year in international relations, there are some significant differences in their interpretations of the Peace of Westphalia. Gross cites the lessening power of the Pope as a reason for the rise of the nation-state,¹⁴ but to Polisensky, any religious results of the Peace of Westphalia were merely afterthoughts; indeed, the Peace of Augsburg, which will be examined later, is only mentioned once in the entire book, and that single mention is in the chapter describing the events

¹¹ Polisensky, 258.

¹² Polisensky, 257.

¹³ Polisensky, 258.

¹⁴ Gross, 32.

leading up to the war.¹⁵ Although the Thirty Years' War began as a religious war, Polisensky is unconcerned with the resolution to those problems. Nevertheless, Gross and Polisensky together make a well-balanced case for the Peace of Westphalia being a significant turning point for Europe.

In the article "Changes in the Westphalian Order: Territory, Public Authority, and Sovereignty," James A. Caporaso examines the evolution of the nation state. Caporaso finds that the traditional definition of a Westphalian nation- exclusive sovereignty over everything within the borders, legal equality with other states, and territorial integrity- already existed to some degree prior to the Peace of Westphalia. According to Caporaso, the Concordat of Worms, which ended the Investiture Controversy in 1122, had already established the rights of monarchs to appoint secular bishops, ending the Investiture Controversy.¹⁶ This directly conflicts with Gross' claim that it was the Peace of Westphalia that removed the Papacy's power over the monarch.¹⁷ The Peace of Westphalia had had the foundations laid out hundreds of years before in prior treaties and papal decisions.

In addition, Caporaso challenges the ideal of a Westphalian nation. He notes that out of the four necessary attributes that make up sovereignty for the quintessential Westphalian state- territory, recognition, autonomy, and control-

¹⁵ Polisensky, 27.

¹⁶ Caporaso, 3.

¹⁷ Gross, 32.

very few nation-states have possessed all four.¹⁸ Caporaso cites African nations that stay intact primarily because the international community says they are intact; European nations that have willingly signed away some of their power to international bodies; and nations such as Taiwan that control their territory despite not being recognized by other nations.¹⁹

Caporaso looks at the Peace of Westphalia as one of many steps that led to the so-called “Westphalian system.” He argues that the seeds had been planted before the Thirty Years’ War, and they did not fully bloom until well after the war was over. By analyzing documents that appear to have elements of Westphalian sovereignty that predate the Thirty Years’ War, Caporaso presents Westphalian sovereignty as a process.

Andreas Osiander approaches the Peace of Westphalia from a slightly different perspective; Osiander is not a historian but rather a scholar of international relations. Nevertheless, Osiander examines the “narrative” that the International Relations community places around the Peace of Westphalia and uses historical evidence to argue that the Westphalian System actually had very little to do with the events of 1648.

Osiander points out in his article “Sovereignty, International Relations, and the Westphalian Myth” that both the Treaty of Munster and the Treaty of Osnabruck, the two main treaties that comprise the Peace of Westphalia, make

¹⁸ Caporaso, 18.

¹⁹ Caporaso, 19.

no mention of sovereignty.²⁰ The closest they come is in reaffirming the Peace of Augsburg (1555), which originally provided for each secular ruler to choose Catholicism, Lutheranism, or Calvinism as an official state religion. In addition, each treaty contained clauses that allowed Sweden and France to intervene should the Holy Roman Empire break the Peace.²¹ This directly violates the concept of individual sovereignty, as it allows external actors to interfere with state affairs.

Unlike Caporaso, Andreas Osiander does not attempt to prove that the ideals of the Westphalian state occurred prior to 1648. Instead, Osiander demonstrates that those idealized traits- control, territory, authority, and recognition- did *not* occur as a result of the Peace of Westphalia. Osiander actually cites the Gross article mentioned previously in this essay, and he points out several flaws with Gross' reasoning. For example, Osiander quotes Gross saying:

[The] actual terms of the settlement would hardly suffice to account for the outstanding place attributed to it in the evolution of International Relations. In order to find a more adequate explanation it would seem appropriate to search not so much in the text of the treaties themselves as in their implications, in the broad conceptions on which they rest and the developments to which they provided impetus.²²

²⁰ Andreas Osiander. "Sovereignty, International Relations, and the Westphalian Myth". *International Organization*, 55 no. 2 (2001) : 261.

²¹ Osiander, 271.

²² Gross, 27.

Osiander treats this as attributing events that later happened as intended by the Peace of Westphalia.²³ This is clearly a post hoc ergo propter hoc fallacy; just because event B occurs before event A, it does not necessarily follow that Event A *caused* event B to happen.

Derek Croxton, in his book Peacemaking in Early Modern Europe: Cardinal Mazarin and the Congress of Westphalia, focuses on the motives of France when signing the Peace of Westphalia. According to Croxton, Cardinal Mazarin viewed the war as a way to extract demands from other nations, such as gaining territory from the Holy Roman Empire.²⁴ As such, Mazarin's representatives during the treaty talks often held up negotiations if they did not go in the way Mazarin had planned.²⁵

The Peace of Westphalia, in this scenario, is no longer an event determining nationality but rather a way for nations to increase their territory. Sweden certainly got larger as a result of the Peace of Westphalia, as did France.²⁶ One could argue that these territory grabs were a sign of growing nationalism, as Caporaso mentions territory as a required element of sovereignty.²⁷ This makes interpreting the Peace of Westphalia that much more confusing.

²³ Osiander, 265.

²⁴ Derek Croxton. Peacemaking in Early Modern Europe: Cardinal Mazarin and the Congress of Westphalia. Associated University Presses. (London, 1969) : 260.

²⁵ Croxton, 273.

²⁶ Treaty of Osnabruck, Article XII. [http:// www.pax-westphalica.de](http://www.pax-westphalica.de) (accessed June 5, 2008)

²⁷ Caporaso, 16.

Much like Croxton uses France as a case study to analyze the Peace of Westphalia, so does Ronald Asch examine Germany. In his book The Thirty Years War: The Holy Roman Empire and Europe, 1618-48, Asch looks at the Peace of Westphalia from the perspective of the German princes. From Asch's standpoint, the Treaties of Munster and Osnabruck were both fairly conservative documents that sought to restore the status quo from before the war.²⁸

According to Asch, the Peace of Westphalia was based not on the desire to create an equally balanced Europe, but instead was based on "law, custom, and precedent", which necessitated a return to pre-Thirty-Years'-War status.²⁹ This explains why, although the German princes did gain the right of territorial superiority, the Emperor of the Holy Roman Empire still retained a significant amount of power. Indeed, in practice many of the German lords needed the protection of the Emperor due to losses suffered during the war.³⁰ The Peace of Westphalia may have *legally* shifted the balance of power from the Holy Roman Emperor to the German princes, but in actuality very little happened.

To Ronald Asch, the enduring power of the Peace of Westphalia was not in the terms of the treaty (or at least not as those terms pertained to the German peoples) but rather the fashion in which the treaties came to be. The Peace was a product of Europe rather than a product of a few nations; most of the major

²⁸ Asch, Ronald G. The Thirty Years War: The Holy Roman Empire and Europe, 1618-1648. St. Martin's Press. New York, 1997. Page 142.

²⁹ Asch, 143.

³⁰ Asch, 148.

nations in Europe had at least some part in drafting it.³¹ Furthermore, all of Europe honored the treaty. By respecting the terms of the treaty, it was ensured that no single monarch would be able to dominate Europe such as the Habsburgs had prior to the start of the Thirty Years' War.³² In addition, this supports Polisensky's view that the stability of the borders that resulted from the Peace helped lead to a surge in nationalism.³³

The transition from the traditional interpretation of Westphalian sovereignty to the revisionist view took place over the last thirty years. The approach from analyzing only the Peace of Westphalia to including previous documents has occurred only recently. In addition, analysis of the Peace of Westphalia has tended to be fragmented, with historians focusing primarily on the religious implications of the Thirty Years' War and political scientists focusing on the political implications. As such, the new models of Westphalian sovereignty are a product of reconciling treating politics and religion during the Thirty Years' War as intertwined together.

Osiander points out that the 350th anniversary of the Peace of Westphalia was largely ignored by the international relations community, which suggests that the revisionist view of the Peace of Westphalia is rapidly gaining acceptance.³⁴ Another factor in this is how the traditional view on Westphalian

³¹ Asch, 148.

³² Asch, 149.

³³ Polisensky, 255.

³⁴ Osiander, 268.

sovereignty treats the Thirty Years' War and the Reformation as events that did not rely on pre-Reformation events. As modern historians focus on history as one long narrative, it becomes even more important to not look at events in isolation.

The revisionist historians make a strong case for Westphalian sovereignty not being a direct product of the Peace of Westphalia, and the primary sources support this view. By looking at documents chronicling some of the conflicts between secular rulers and the Papacy, it becomes apparent that a proto-Westphalian system was slowly coming to be in the centuries before the Thirty Years' War. In particular, the Concordat of Worms, the Concordat of London, the Peace of Passau, and the Peace of Augsburg show a trend of secular rulers increasing their power within their territories. By analyzing the cause and effects of these documents, it will become apparent that the increase in secular power during this time period served as the origin of Westphalian sovereignty.

Primary Source Analysis

The first vestiges of Westphalian sovereignty appear as early as the 1100's, with the signings of the Concordat of Worms and the Concordat of London. These agreements, the first between Holy Roman Emperor Henry V and Pope Calixtus II, and the second between Henry I of England and Archbishop Anselm of Canterbury, ended the Investiture Controversy, in which the Papacy and the Emperor disagreed on who had the power to appoint bishops. Bishops, despite holding an ecclesiastical position, controlled bishoprics that

brought wealth and power to the bishops. As such, the King wanted the bishops to be loyal to the throne, while the Pope wanted bishops who were loyal to the Church. Henry IV, Holy Roman Emperor, declared that only the Emperor had the authority to appoint bishops, and then declared that Pope Gregory VII was not the true Pope. Pope Gregory VII's response was to excommunicate Henry and declare him no longer the official Holy Roman Empire.³⁵ It wasn't until later that Henry V and Pope Calixtus II were able to settle on an agreement, signing the Concordat of Worms in 1122. The Concordat of Worms allowed rulers to grant bishops secular power, although this power was limited to territory controlled by that ruler.³⁶ By taking away some of the Pope's authority over other nations, the Concordat of Worms set the foundation for the doctrine of territorial integrity.

In solving the Investiture Controversy, the Concordat of Worms made a clear distinction between powers that were granted to secular rulers and powers that were granted to the Church. Pope Calixtus II writes,

the elections of the bishops and abbots of the German kingdom, who belong to the kingdom, shall take place in [Henry V's] presence, without simony and without any violence; so that if any discord shall arise between the parties concerned, [Henry V], by the counsel or judgment of the metropolitan and the co-

³⁵ Uta-Renate Blumenthal. The Investiture Controversy: Church and Monarchy from the Ninth to Twelfth Century. University of Pennsylvania Press (Philadelphia, 1998) : 141

³⁶ "Concordat of Worms". (Medieval Sourcebook, 1996)
<http://www.fordham.edu/halsall/source/worms1.html> (accessed on June 5, 2008)

provincials, may'st give consent and aid to the party which has the more right.³⁷

Power that had previously been held by the Catholic Church transferred to a secular ruler.

The Concordat of Worms did not bring Westphalian sovereignty to Europe. Indeed, the Edict of Emperor Henry V refers to Calixtus II as “our master Pope Calixtus.”³⁸ However, the trend of secular rulers asserting power within their own territories is evident in 1122.

The Concordat of Worms has not been analyzed with respect to the Peace of Westphalia or Westphalian sovereignty until approximately the 1970's, when historical revisionism began to gain acceptance. The disconnect between the Westphalian sovereignty and the Concordat of Worms is partially due to the enormous amount of time that elapsed between the Concordat of Worms and the signing of the Peace of Westphalia. It is also possible that since the Concordat of Worms is solely concerned with the appointment of bishops, it can be interpreted as focusing more on religion than on political structures.

Nevertheless, the Investiture Controversy shows the start of the process that resulted in Westphalian Sovereignty. The Concordat of London, signed in 1107 by Henry I of England and Pope Gregory, ended the Investiture Controversy in England. The compromise found in the Concordat of London removed the right of Henry I to appoint bishops, but gave him the right to

³⁷ Concordat of Worms

³⁸ Concordat of Worms

demand service from the bishops as if they were any other vassal.³⁹ This gave the monarchy more control over the clergy, strengthening the power of the king.

Protestantism led to the next rise of secular power. In 1517, Martin Luther posted 95 theses on the door of the cathedral in Wittenberg. These theses criticized various practices of the Catholic Church, such as the sale of indulgences and the tendency to make religion about Church ritual rather than a personal relationship with God.⁴⁰ Although Luther originally intended to reform the Catholic Church, his 95 theses had the effect of starting a separate Christian Church outside of the Catholic structure that eventually became known as Lutheranism. Many rulers, such as Henry IV, Duke of Saxony, and Henry VIII of England used Protestantism as an excuse to break away from the Papacy and decrease the influence of the Vatican in their lands.

The Holy Roman Empire, represented by Emperor Charles V, and an alliance of Lutheran nobles signed the Peace of Augsburg in 1555.⁴¹ This document, originally intended to grant Lutheranism legal status within the Holy Roman Empire, also contains clauses suggestive of Westphalian sovereignty—ninety-three years before the Peace of Westphalia. The Peace of Augsburg, in

³⁹ Eadmer. Historia novorum in Anglia. Translated by Geoffrey Bosanquet (London, 1964): 199

⁴⁰ Project Wittenberg. 1998. "Selected Works of Martin Luther, 1483-1546". <http://www.ctsfw.edu/etext/luther/theses/> (accessed June 5, 2008)

⁴¹ Peace of Augsburg. <http://www.uoregon.edu/~sshoemak/323/texts/augsburg.htm> (accessed June 5, 2008)

addition to protecting the rights of Lutherans, also established rights for territorial rulers.

The 20th article of the Peace of Augsburg removed church power from territories designated to be Protestant, which in turn increased secular power by allowing the rulers to choose whether or not ecclesiastical law could still be applied to their territory.⁴² The most important article, at least as pertaining to Westphalian sovereignty, is Article 23, which states, “No Estate shall try to persuade the subjects of other Estates to abandon their religion nor protect them against their own magistrates. Such as had from olden times the rights of patronage are not included in the present article.”⁴³ Here the Peace of Augsburg reflects rudimentary ideas of Westphalian sovereignty; while rulers were allowed to choose their own state religion in accordance with Articles 15 and 16, which read

15. In order to bring peace to the Holy Roman Empire of the Germanic Nation between the Roman Imperial Majesty and the Electors, Princes and Estates, let neither his Imperial Majesty nor the Electors, Princes, etc., do any violence or harm to any estate of the empire on the account of the Augsburg Confession, but let them enjoy their religious belief, liturgy and ceremonies as well as their estates and other rights and privileges in peace; and complete religious peace shall be obtained only by Christian means of amity, or under threat of punishment of the Imperial ban.⁴⁴

16. Likewise the Estates espousing the Augsburg Confession shall let all the Estates and Princes who cling to the old religion live in

⁴² Peace of Augsburg, Article 20

⁴³ Peace of Augsburg, Article 23

⁴⁴ Peace of Augsburg, Article 15

absolute peace and in the enjoyment of all their estates, rights, and privileges.⁴⁵

In this way, the Peace of Augsburg specifically prevented interference with other territories.

Although the Peace of Augsburg is specifically mentioned in the Peace of Westphalia, the Peace of Augsburg is seldom mentioned in connection with the concept of Westphalian sovereignty. Perhaps this is due to a narrow view of the Peace of Augsburg, with historians such as Josef Polisensky treating the Peace of Augsburg as nothing more than a religious document.⁴⁶ Nevertheless, it is the Peace of Augsburg that mentions the doctrine of *cuius regio, eius religio*, or “Whose rule, his religion,” that makes the Peace of Augsburg a political document as well as a religious one. By allowing rulers to decide that their territory was Lutheran instead of Catholic, the balance of power between the papacy and secular rulers shifted even further towards the secular.

The Peace of Westphalia was comprised of three separate treaties, as the Catholic and Protestant nations refused to meet with each other. The Catholic parties met in 1648 in Munster, a traditionally Catholic city, whereas the Protestants met fifty kilometers north in the Protestant city of Osnabruck. The two treaties signed at these locations comprise the majority of the Peace of Westphalia. Many of the provisions in the two Treaties effect a return to either pre-war or near-pre-war conditions, particularly where religious matters are

⁴⁵ Peace of Augsburg, Article 16

⁴⁶ Polisensky, 27

concerned. One such example is Article 23 of the Treaty of Munster, which reads:

That those of the Confession of Augsburg, and particularly the Inhabitants of Oppenheim, shall be put in possession again of their Churches, and Ecclesiastical Estates, as they were in the Year 1624. as also that all others of the said Confession of Augsburg, who shall demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their Neighbours, preaching the Word of God.⁴⁷

The references to policies in place prior to the Thirty Years' War⁴⁸ suggest that the Peace of Westphalia was a refinement of pre-existing topics.

At first glance, it is difficult to reconcile the extent to which the Treaty of Osnabruck and the Treaty of Munster enforce a pre-war status, due to the vast amount of territory that changed hands. Traditionally, historians have viewed the Treaties of Osnabruck and Munster as radical documents. However, to understand the Peace of Westphalia the territorial aspects of the two Treaties must be separated from the religious and political aspects. Changes in which areas are controlled by a nation are not synonymous with changes in the philosophy on how that region is governed.

Certainly the Peace of Westphalia contained certain elements of Westphalian sovereignty in it. Article 63 of the Treaty of Munster granted

⁴⁷ Treaty of Munster, Article 23. [http:// www.pax-westphalica.de](http://www.pax-westphalica.de) (accessed June 5, 2008)

⁴⁸ The Treaty of Munster uses 1624 instead of 1618 (the year the war began) because the Lutherans retained possession of the churches for six years. Pre-1624 status is, for these purposes, identical to pre-1618 status.

formal independence to Switzerland, a territory that had technically been part of the Holy Roman Empire, despite the Emperor having no effective power there.

⁴⁹Similar articles recognized similar territories, such as Mantua and Savoy.⁵⁰

This is indicative of how one of the required elements for Westphalian sovereignty, especially as defined by Caporaso, is control.

Much more telling, however, is the treatment of religion, because the Peace of Westphalia uses the religious background of the war as a way to increase secular power. The Treaty of Osnabruck states in Article 5, Section 1 that:

“...the Transaction settled at Passau in the Year 1552. and follow'd in the Year 1555. with the Peace of Religion, according as it was confirm'd in the Year 15[6]6. at Augsburg, and afterwards in divers other Diets of the sacred Roman Empire, in all its Points and Articles agreed and concluded by the unanimous Consent of the Emperor and Electors, Princes and States of both Religions, shall be maintain'd in its Force and Vigour, and sacredly and inviolably observ'd.”⁵¹

By upholding the Peace of Augsburg, the Treaty of Osnabruck settled the religious conflict. This Article had the side effect of lessening the influence of the Catholic Pope in the Holy Roman Empire; each ruler was recognized as having the ability to choose the official state religion for his territory. In this

⁴⁹ Treaty of Munster, Article 63

⁵⁰ Treaty of Munster, Article 61

⁵¹ Treaty of Osnabruck, Article V, Section 1

way, the Peace of Westphalia reinforced territoriality; the power of each ruler did not extend into land governed by other leaders.⁵²

However, the text of these documents does not explicitly mention sovereignty rights; all aspects of sovereignty must be inferred from the text. Indeed, this method of inferences is how Leo Gross and Josef Polisensky arrived at the traditional view of Westphalian sovereignty in the first place. Although the shifts in control of land previously controlled by the Holy Roman Empire could be indicative of territoriality, the religious aspects, which contribute more directly to the increased rights and responsibilities of sovereign rulers, tend to focus on the status of Europe prior to the Thirty Years' War. The Treaty of Osnabruck upholds the decisions which were made at the Peace of Passau in 1552 and the Peace of Augsburg in 1555, which in turn are influenced by prior events.⁵³

Conclusions

While the Peace of Westphalia was not the beginning of Westphalian sovereignty, it did play the important role of applying the principles found in the earlier documents to international relations. The Concordat of London was between England and the Papacy; the Concordat of Worms was between the Holy Roman Empire and the Papacy. The Peace of Augsburg was signed by the Holy Roman Emperor and several Lutheran nobles; in other words, an internal

⁵² Treaty of Osnabruck,

⁵³ Treaty of Osnabruck, Article V

document. By putting these principles of increased secular power into an international treaty, as the Peace of Westphalia did, the rulers were able to define their power in relation not just to the Papacy, but to other nations as well. Despite not being the groundbreaking event that the traditional view of Westphalian sovereignty has made it, the Peace of Westphalia did make tangible changes to the international order.

Westphalian sovereignty was a long process that improved with the Peace of Westphalia, but by no means did Westphalian sovereignty begin in 1648. The Peace of Westphalia was merely another step in the long process of establishing ideals of Westphalian sovereignty. It is important to point out that the traditional view of Westphalian sovereignty, which holds that the Peace of Westphalia was entirely responsible for ushering in a Westphalian era is incorrect, not only because the conflicts between secular rulers and the Papacy demonstrate the beginnings of Westphalian ideals long before the Thirty Years' War, but also because the Peace of Westphalia was not even the endpoint of this process. In addition to allowing Sweden and France to use force to keep the Holy Roman Empire from breaking the treaty, which violated the concept of territorial integrity,⁵⁴ there are other examples of how the Peace of Westphalia did not make Europe entirely Westphalian. The Holy Roman Empire consisted of over 300 territories that had voting rights in the Reichstag, and each ruler had a strong control over their territory, particularly after the signing of the Peace of

⁵⁴ Osiander, 271

Westphalia. However, each territory still nominally reported to the Emperor of the Holy Roman Empire, and all rulers had to obey the constitution of the Holy Roman Empire. This arrangement is called *Landeshoheit*, which despite literally translating to “National Sovereignty”, describes a system where rulers have most, but not all, of the benefits of sovereignty.⁵⁵ After the Thirty Years’ War, the lesser rulers had more power over their territories than ever, but they did not have Westphalian sovereignty, as they did not have the right to form alliances against the Holy Roman Emperor or engage in international agreements without the consent of the Holy Roman Emperor.

By analyzing the origins of Westphalian Sovereignty, it becomes increasingly apparent that the Peace of Westphalia was not the sole origin of Westphalian nation-states. The interactions between secular rulers and religious leaders demonstrate a slow movement towards Westphalian sovereignty, borne by a desire of secular rulers to remove the influence of the Pope from their lands. The Papacy’s loss of control over the secular rulers, particularly the Protestants, resulted in the bolstering of all secular rulers. This, in turn, allowed the rulers of Europe to focus on relations between each other while utilizing the same ideals that had been encouraged by the religious conflicts. Without the Investiture Controversy or the Peace of Augsburg, the Peace of Westphalia would have only been remembered for ending the war. “Westphalian sovereignty” is a misnomer, and the fact that the Westphalian model evolved slowly over time suggests that it

⁵⁵ Osiander, 282

will continue to do so in the future. Nevertheless, with the rise of globalization, nation-states are becoming less and less Westphalian as international organizations such as the European Union, the United Nations, and the International Criminal Court gain legal power to intervene in countries. The past of Westphalian sovereignty is marked by the desire to limit the influence of external actors. It will be interesting to see what the future of Westphalian sovereignty holds.

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