REVISITING THE FOUNDATIONS OF INTERNATIONAL LAW:

A CLOSE ANALYSIS OF THE PEACE OF WESTPHALIA

An Undergraduate Research Scholars Thesis

by

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ABSTRACT

Revisiting the Foundations of International Law:
A Close Analysis of the Peace of Westphalia

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Historians have generally accepted that the Peace of Westphalia (1648), which concluded the Thirty Years' War (1618-48), was the moment when the concept of sovereign equality, a concept that recognizes that states have jurisdiction over their own territory and are all equal before international law, became an internationally recognized principle in diplomatic negotiations. However, recently, some scholars have begun to reevaluate this assumption, claiming that the Peace did not actually (formally or officially) establish the principle of sovereign equality throughout Europe. This reopening of a question long considered answered has proved fruitful and has encouraged this project's exploration of both the Peace itself and of how subsequent politicians and diplomats actually deployed the Peace in their negotiations. This paper argues that, in international treaty negotiations, it may have mattered less to negotiators what the Peace actually said or what it formally established, than what negotiators argued it said and how they wielded it in their discussions. A close reading of the text of the Peace itself, as

well as of subsequent negotiations between the 17th and 20th centuries, reveals when and how diplomats wielded the Peace in their negotiations and to what effect.

This project applies a close, contextual reading of the texts of treaties and the various interpretations of them over time. It looks for specific references to the Peace of Westphalia in later peace treaties, analyzes what diplomats meant when they invoked it, and considers whether the treaties themselves resulted in outcomes that were consistent with the intent of the negotiators. Finally, it considers whether or not the Peace exercised the influence on international relations that some past scholars have claimed.

This project has three sections. First, it analyzes the context for the Peace of Westphalia including the wider debates circulating at the time that influenced negotiations. It reads the texts of the treaties that comprised the Peace and it considers the immediate interpretations associated with it. Second, it explores if and how it was invoked in subsequent peace treaties and organizations up to the United Nations Charter (1948). A careful examination of the texts and debates from the time frame indicates that diplomats and politicians invoked the Peace of Westphalia during negotiations that concluded the following wars: The War of Spanish Succession with its Treaty of Utrecht (1715), the War of Austrian Succession with its Treaty of Aix-la-Chapelle (1748), The Napoleonic Wars with the Congress of Vienna (1814), and World War I and the Treaty of Versailles (1919). This paper will also examine the United Nations Charter because it is the focus of several influential sources. Finally, it places this history in conversation with the current scholarly arguments about the importance of the Peace for international relations.

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INTRODUCTION

On May 23, 1618 the Thirty Years War began in the Holy Roman Empire.[1] This war cumulated in the Congress of Westphalia which produced the Peace of Westphalia. The Peace was actually two treaties that were signed at two different times, locations, and between different rulers. The Peace has been identified as having established equally accountable states within an international community which allowed for the implementation of the concept of sovereign equality. Sovereign equality is the idea that recognizes that states have jurisdiction over their own territory and, therefore, are all equal in international law.

The Peace of Westphalia undermined the Catholic Pope's religious authority by making allowances for and protecting Protestants. Before, the Papacy had exercised not only religious but territorial power (the Papal States). His authority also had reached into other states and their domestic affairs. Although papal influence had waned considerably since the Middle Ages, it was by no means inconsequential at the beginning of the seventeenth century. The Peace, however, undermined this secular power, and freed the states of Europe from the last significant remnants of Papal authority, which changed the international community and effectively created a new one. Because the universal reach of the Catholic Church had been definitively fractured territorial governments found themselves in a position to create new ways to navigate international affairs. The structure that the diplomats established in the treaties allowed for the concept of sovereign equality to take hold and, thus, all the individual governments embraced their right to rule over their own territory. The Westphalian treaties asserted a smaller scale of

[1] Tryntje Helfferich, *The Essential Thirty Years War* (Indianapolis, IN: Hackett Publishing Co., 2015), xv.

this system within the Holy Roman Empire when they proclaimed that each Prince had the power to decide the religion for their region.

First, this project analyzes the text of the Peace itself, texts that influenced its authors and the immediate interpretations associated with it. Although the term "sovereign equality" was not used, the writers use terms that asserted the principle. Several previous treaties influenced the contents of the Peace and gestured to some of the principles that Westphalia is associated with. These include the Peace of Augsburg (1555), Edict of Restitution (1629), and Peace of Prague (1635) all preceded the Peace of Westphalia and influenced the negotiations.

Second, I explore if and how sovereign equality and the Peace of Westphalia was invoked in subsequent peace treaties and organizations up to the United Nations Charter (1948). By looking at the use of the Peace of Westphalia in later peace treaties, we can determine whether or not it had the effect on international relations that scholars claim it had. The Westphalian system was tested and developed throughout subsequent treaties and negotiations. This paper will thus evaluate the Treaty of Utrecht (1713), Treaty of Aix-la-Chapelle (1748), Congress of Vienna (1814), Treaty of Versailles which included the Covenant of the League of Nations (1919), and United Nations Charter (1945).

Finally, I place this history in conversation with subsequent scholarly arguments about the importance of the Peace for international relations. Exploring references to Westphalia in the international law itself and by authorities on international law reveal how subsequent students of the Peace conceptualized it.

Many historians have proposed that the Peace of Westphalia was the moment when the concept of sovereign equality became internationally and legally recognized. More recently, scholars begun to reevaluate this claim and some have concluded the contrary: that the Peace did

not actually establish sovereign equality throughout Europe. However, given the frequency and intensity of references and debates over Westphalia, this suggests that whether or not the Peace deserves the attention it has received, it has proved over time to be "good to think with."[2] This paper argues that for the politicians who negotiated future treaties it may not matter what the treaties actually said as much as what they imagined and used it.

Treaties are, at the most basic level, an agreement between any number of countries or international organizations. This agreement can contain different articles and do different things. They are meant to resolve conflict but can result in more conflict. In this paper, a treaty fails if it does not resolve the conflict for any amount of time. For example, if a treaty is signed, then ignored and never enforced it has failed.

Literature Review

In the process of researching this paper I have uncovered a considerable body of sources (from subsequent treaties to scholarly debates) that refer to the Peace of Westphalia. Because of this unwieldly potential source base, not every single treaty could be examined for this project. Therefore, I have limited my analysis to what was referenced in several of the most important modern critical sources ("The Peace of Westphalia, 1648-1948" by Leo Gross and "The Westphalian Model and Sovereign Equality" by Peter Stirk). I have also limited the primary texts that I will consider. The source text of the Treaty of Utrecht (1713), Treaty of Aix-la-Chapelle (1748), Congress of Vienna (1814), and the Charter of the United Nations (1945) will not be examined.

The principal text in this paper for studying the Peace of Westphalia (1648) is *The Essential Thirty Years War* by the historian Tryntje Helfferich. Helfferich covers both the history

[2] Claude Levi-Strauss, *Totemism*, trans. Rodney Needham (Boston: Beacon, 1963), 89.

of the Thirty Years War itself as well as the Peace of Westphalia. Although the Peace was made up of two treaties, Helfferich only provides the complete translation of one. However, many of the articles are exactly the same in both treaty texts so only when the two differ does Helfferich explains the divergence or quotes directly from the text that differs.

For the Treaty of Versailles (1919), this paper uses the copy provided in *The Treaties of Peace, 1919-1923* by Lt. Col. Lawrence Martin. This work included the complete treaty within it as well as the Covenant of the League of Nations (1919). In addition to the primary text, this paper considers an analysis done by Sterling Edmunds of the relationship of the treaty to the law of nations in his book *International Law and the Treaty of Peace*. Edmunds published his severe critique of the Treaty of Versailles in 1919. This means that he was writing while the treaty was being written and enforced. It is important to note that he was very biased against the treaty. This is reflected in his work.

Several writers are used in this paper for their interpretation of a treaty, event, or concept. *The Law of Nations* (1758) by Emmerich de Vattel was an early comprehensive work that covers many aspects of international law in the generation after the Peace of Westphalia. Vattel was strongly influenced by Hugo Grotius's work.

The book *Three Centuries of Treaties of Peace and Their Teaching* (1918) by Sir W. G. Phillimore offered several noteworthy comments on the international system. It is important to note that this work was published while the Treaty of Versailles was being discussed and World War I undoubtedly had a strong effect on his work.

Sterling Edmunds[3] examined the Treaty of Versailles in 1919. He did this by comparing the Treaty of Versailles side by side with the law of nations in his book, *International Law and*

[3] Edmunds was an international law lecturer at St. Louis University.

the Treaty of Peace. He went through the text and break the Treaty of Versailles down article by article. He referenced Vattel's work on the law of nations for his analysis.

The Foundations and Future of International Law (1941) by Tufts University professor P. H. Winfield is covered in this paper for his succinct and accessible writing and comments on the international system. It is important to note that he was writing almost thirty years after Phillimore and Edmunds during the buildup to World War II when Nazi Germany was beginning to invade. His work may be a response to several policies from that time, such as appeasement.

Gerry Simpson published his critique of the United Nations Charter in 2000. His article, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," showcased his biased against the Charter. He argued fervently that the United Nations is a hegemonic institution that invoked sovereign equality only to disregard it pragmatically.

It should be noted that this paper is concerned with international relations exclusively within Europe. The author does not speak any language besides English and because of this some valuable sources may have been overlooked.

History of the Language of International Law

There are several terms that have evolved with the development of international relations that need to be defined. They include the law of nations, sovereign equality, the balance of power doctrine, the Concert of Europe, pragmatism, and international law. International relations have changed over time. This is reflected in the different terms that emerged.

The law of nations is a system that Hugo Grotius greatly contributed to in his book *On the Law of War and Peace* in 1625. This system developed how states were to relate to each other. It regulated how states were supposed to act. This paper was not able to examine Grotius's

contributions in detail but he did influence Emmerich de Vattel, whose work this paper did examine more thoroughly.

Sovereign equality, for the purposes of this paper, is the concept that recognizes that states have jurisdiction over their own territory and are all equal within the international system. It has been developed over time since the Peace of Westphalia in 1648. It stated that the authority of the state was derived from the authority that the people under it gave up. While the author has been unable to determine exactly when this term was first used, it was claimed by Gerry Simpson that the United States State Department replaced 'equality of nations' with 'sovereign equality' during the negotiations prior to the drafting of the United Nations Charter.[4]

The term international law was first used in 1789 by English philosopher Jeremy Bentham. P. H. Winfield offered a succinct close analysis of the role of a variety of principles international law in his book, *The Foundations and Future of International Law* (1941). His definition of international law stated that the treaty must establish general conduct and be between several parties.[5] Winfield suggested that there should be three goals of international law: First, to remove laws which cause disputes between countries; second, if a dispute arises a tribunal should convene wherein the disagreeing countries can settle the dispute; and third that, if one of the countries does not submit to the tribunal or its decision, measures will be taken to prevent war.[6]

The balance of power doctrine was developed by Friedrich von Gentz in 1806. The goal of the doctrine was to not allow a single state to become strong enough to overtake all or some of

[4] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 145.
[5] Winfield, *The Foundations and Futures of International Law*, 23.
[6] Winfield, *The Foundations and Future of International Law*, 101.

the powerful states. [7] The Congress of Vienna (1814) is credited with establishing this doctrine within European international relations. In the wake of the Napoleonic Wars, the Congress understood that it needed to keep France strong because it was one of the powers of Europe. As a power, France helped to keep other states in check and the international system functioning. Therefore, according to this doctrine, it needed to be preserved not dismantled (as Germany was in the Treaty of Versailles). The Congress of Vienna, with this doctrine, created the Concert of Europe. This is the term used to describe the relationships between the powers of Europe in the nineteenth century. This Concert was like a balancing act that failed when World War I broke out.

Pragmatism, or *realpolitik* was another team that has evolved out of the international system. It is the concept that ideals are second to the reality of the situation.[8] It is usually associated with Otto von Bismarck in the nineteenth century.

According to P. H. Winfield, international law itself had two ways of adding rules - first, if the rule was based on a custom that was generally observed by states, then it could become a law. Second, if the rule was set forth in a law-making treaty.[9] This process was, in actuality, more complicated than it seemed. Although there are several criticisms of the custom route, they have no bearing on the second, treaty route, which concerns this paper. Winfield admits that "not all treaties are sources of law" because the prospective law in the treaty could oppose a law that was already in place.[10] In order for a treaty to be law making, a majority of the states must be

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[7] Sir Walter G. F. Phillimore, *Three Centuries of Treaties of Peace and Their Teaching* (Boston: Little, Brown & Co, 1918), 4.
[8] For example, if during the Cold War the US President held a summit with China and Russia to discuss international politics, then the President would be putting aside their ideals about communism in favor of the reality that they need to talk with Russia and China because they are also world powers.
[9] Winfield, *The Foundations and Future of International Law*, 21.
[10] Winfield, *The Foundations and Future of International Law*, 23.

involved. Treaties are to be kept but can become null over time "when the circumstances in which it was made have essentially altered" or if all of the parties involved agree to change it.[11]

Sovereign states are under international law. Winfield gives his definition of a sovereign state: "A state [that] is a political community the members of which are bound together by the tie of common subjection to some central authority which the bulk of them habitually obey; and that authority does not habitually obey anyone else."[12] This sovereign state was not subject to any authority other than the one to which it has agreed. It "claims and actually possesses an absolute independence of all other" states.[13] A partially sovereign state, which was one that has lost control over part of its territory, was still accountable to international law. The third and last kind of state that Winfield described was one that has been taken over by rebels in a coup, revolution, or any such instance where there was a change of government.[14] Their sovereignty was compromised because they compromised another state's sovereignty and authority.[15]

[11] Winfield, *The Foundations and Future of International Law*, 41.
[12] Winfield, *The Foundations and Future of International Law*, 25.
[13] Clarke, Thomas Brooke, *An historical and political view of the disorganization of Europe*, 1.
[14] This rebel state was still accountable to international law, but the rules change for them slightly - if they were affecting another country besides the one they were taking over, then the ruler of the other country had the right to go in and stop them.
[15] Winfield, *The Foundations and Future of International Law*, 25-26, 28.

1. THE ORIGIN OF SOVEREIGN EQUALITY

1.1 The Thirty Years War

The Thirty Years War began in 1618 as an "imperial civil war"[16] within the Holy Roman Empire. The first part of the war originated in an internal struggle between the Holy Roman Emperor Ferdinand II and his opponents within the empire.[17] However, several other European countries entered into the war, turning it into an international European war. By the time that the war had finally ended France, Sweden, and Denmark had all entered the fray. Several countries' leaders died over the course of the war, such as Ferdinand II of the Holy Roman Empire and the King of Sweden Gustavus Adolphus. By the end of the complicated and lengthy peace negotiations the belligerent countries, who had met in two different cities determined by their state religion, signed two separate treaties and ended the war.

Before the war broke out, the Holy Roman Empire - modern day Germany[18] and part of Eastern Europe - was ruled by the Habsburg family. The Empire had evolved out of the early Middle Ages as a composite monarchy, in which a relatively weak elective Emperor reigned over states of diverse sizes and political structures. By the 17th century the Habsburg family, whose power originated in Austrian and Hungarian lands on the easter frontier of the Empire, had ruled as emperors since the fifteenth century. The governmental hierarchy was organized in a loose and contentious federation of semi-autonomous states governed by diverse forms of government, with the imperial monarchy ruling over all of them.[19] The system was organized in

[16] Helfferich, *The Essential Thirty Years War*, xix.
[17] Helfferich, *The Essential Thirty Years War,* xv.
[18] Helfferich, *The Essential Thirty Years War*, ix.
[19] Helfferich, *The Essential Thirty Years War*, x.

a very complicated way and is difficult to describe in full. Below is a diagram designed by Peter Wilson in his book *The Thirty Years War: A Sourcebook.*[20]

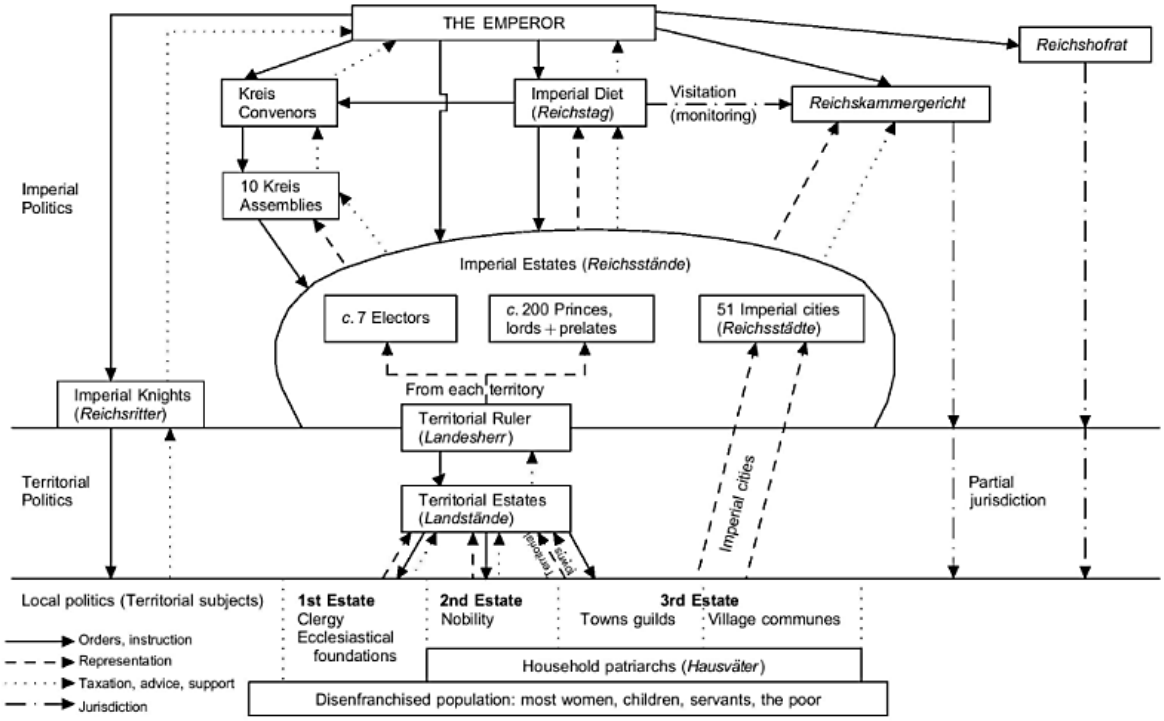

Figure 1.1: The Holy Roman Empire's Political System, pre-Thirty Years War

From Figure 1.1, it is apparent that the system was very complex. For this paper, the author only generally speaks of this system but will refer to the Emperor, Imperial Diet, princes, and the electors.

The issues that contributed to the Thirty Years war had already cause rebellion to erupt in the recent past. After each struggle, imperial regents negotiated peace and wrote treaties. One of the most important treaties - the Peace of Augsburg in 1555 - tried to end the religious struggle by giving the Lutheran Princes full legal status. It confirmed and expanded a previous treaty - the

[20] Peter Wilson, *The Thirty Years War: A Sourcebook*, (Hampshire: Palgrave Macmillan, 2010) xxix.

Treaty of Passau from 1552 - and established the principle *cuius regio, eius relgio*, or whose reign, his religion. In practice, each prince could pick for his territory what religion subjects would follow, either Catholicism or Lutheranism.[21] While the Peace of Augsburg was successful for a time, it was explicitly intended to be temporary[22] and two major problems soon arose. First, this treaty only gave protections to Lutherans and did not recognize the smaller Protestant sects that emerged after 1555 (e.g., Calvinists). Second, the Protestant population had continued to seize Catholic church property even after the treaties prevented them from doing this. When the Emperor had attempted to return some of the stolen property back to the Catholic church, the Protestant population saw this as an "act of war" and a violation of their rights.[23] The civil war that erupted again in 1618 turned into the Thirty Years War. The grievances included the control of property (especially religious property), territory, religious liberty and power, and the structure of the Holy Roman Empire.

War broke out when tensions over these issues between the Emperor, the Princes, and the local estates boiled over. The local estates claimed that they had the right to veto central taxes, oversee their regional government, negotiate with external entities, appeal to the King directly, declare the religion of their territory, and to fire the Princes. They pressed hard to take power and authority from the centralized part of the government for themselves.[24] This pressure and the grievances of the local estates were further complicated and compounded by religious tension. The war began with the Defenestration of Prague on May 23, 1618.[25] A large number of

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[21] *The Religious Peace of Augsburg (September 25, 1555)*, in *Experiencing the Thirty Years War, A Brief History with Documents*, ed. by Hans Medick and Benjamin Marschke (Boston: Bedford/St. Martin's, 2013), 46.
[22] *The Religious Peace of Augsburg (September 25, 1555)*. *Experiencing the Thirty Years War, A Brief History with Documents*, 45, 48.
[23] Helfferich, *The Essential Thirty Years War*, xii.
[24] Helfferich, *The Essential Thirty Years War*, x.
[25] Wilhelm Count von Slavata, *The Defenestration of Prague (May 23, 1618)*, *Experiencing the Thirty Years War, A Brief History with Documents*, eds. Hans Medick and Benjamin Marschke (Boston: Bedford/St. Martin's, 2013), 36.

Protestants had gathered in Prague "to protest new imperial policies that violated their religious rights as Protestants, as well as their political rights as estates."[26] When the imperial regents and the leaders of the Estates gathered to talk about what was happening, the men stormed their meeting place and threw the two regents and the secretary out of the window,[27] apparently while screaming: "Now we will deal with our religious enemies appropriately!"[28] Both escaped, what thereafter was called the "Defenestration of Prague," with their lives, probably due to their heavy coats and the incline of the wall that caused them to slide down instead of plumet.[29] By the time the war started, barely a hundred years had passed since Luther had nailed his theses to the door and sparked the Reformation. Some of the Princes had already declared themselves Protestant instead of Catholic, which was what religion the Emperor ascribed to and what defined the Empire as "Holy."

These issues proved "fully interrelated" to international politics. Denmark, Sweden, Spain, and France ultimately became major players in the war, entering for territorial and/or religious reasons. Catholic ruled Spain, being part of the Habsburg Empire, was involved early on in the war and started providing the Holy Roman Empire assistance in 1619.[30] Protestant ruled Denmark entered into the war later in 1625, which "restart[ed] the war."[31] Sweden became involved on the Protestant side five years later and France joined the Catholics five years after Sweden.[32] With all these countries and their own political and financial aims in the mix, it is not

[26] Wilhelm, *The Defenestration of Prague (May 23, 1618)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 36.
[27] Helfferich, *The Essential Thirty Years War*, 11.
[28] Wilhelm, *The Defenestration of Prague (May 23, 1618)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 38.
[29] Wilhelm, *The Defenestration of Prague (May 23, 1618)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 37.
[30] Wilson, *The Thirty Years War*, xix.
[31] Wilson, *The Thirty Years War*, xix.
[32] Wilson, *The Thirty Years War*, 303.

hard to grasp why the war carried on for so long and was so destructive. The mounting death toll was undoubtably a source of pressure for negotiators. Later, at the Congress of Vienna (1814) when the balance of power doctrine was enacted, this treaty was cited because there were so many political interests involved and the treaty "made the absolute dominion of the [Holy Roman] Emperor over the whole of Germany impossible."[33] The treaty laid the foundation for this doctrine, although the Congress of Vienna is credited with establishing it firmly, because it made peace between the Protestants and Catholics. "There is little doubt that notions of the balance of power did become more prominent in Europe after 1648."[34] In order that one might not gain an advantage over the other, a balance needed to be struck.

The Edict of Restitution was issued on March 6, 1629 during the Thirty Years War by Emperor Ferdinand II. At this point in the war, Catholic France had not yet joined the Protestant side and the Catholics were clearly winning "after a decade of uninterrupted military victories, and the edict signaled the victor's plans for a post war settlement."[35] To Catholic advisors, this edict was a way of bringing "Protestant souls to the old faith" by restoring the lands they had taken back during the Peace of Augsburg.[36] Protestant "contemporaries saw its legalized seizure of Protestant lands and outright intolerance of Calvinism as highly aggressive."[37] While the Edict was meant to signal the end of the war it did the opposite. The Protestant population was upset and fearful of what the Emperor would do with the power he was winning through the war and "most Catholic leaders, apart from the militant Jesuits, found the edict to be overreaching and

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[33] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 19.
[34] Andrew C. Thompson, *War and Religion After Westphalia, 1648-1713*, ed. David Onnekink (Vermont: Ashgate Publishing Co., 2009), 52.
[35] *The Religious Peace of Augsburg (September 25, 1555)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 48.
[36] *The Religious Peace of Augsburg (September 25, 1555)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 48.
[37] *The Edict of Restitution (March 6, 1629)*, *Experiencing the Thirty Years War, A Brief History with Documents*, eds. Hans Medick and Benjamin Marschke (Boston: Bedford/St. Martin's, 2013), 49.

unrealistic, and they anticipated that it would prolong the war by hardening Protestant resistance."[38] The edict was not applied to all of the affected properties or in the same way across those that were affected. So, war continued.

The Peace of Prague, issued on May 30, 1635, shifted the alliances while France was gathering strength to intervene in the war. This Peace was between Emperor Ferdinand II and Elector Johann Georg I, Duke of Saxony who was a Protestant leader in the Holy Roman Empire. It was put together in the wake of two important events: The Catholic win at the Battle of Nördlingen in 1634 and France entering the war in late 1635.[39] France, though Catholic, actually entered the war on the Protestant side because dividing Germany was the best decision for the security of the country.[40] The intention behind the Edict of Restitution (1629) was to take a first step toward ending the war by persuading Protestant states to return to the Empire. The Emperor withdrew the Edict because it was causing disagreement. The Emperor promised amnesty to the princes and leaders who rebelled if they would surrender. The Elector of Saxony received "territorial concessions" for surrendering and a few Protestant princes followed his lead, all while the war continued.[41]

However, the Emperor could not offer amnesty to all of the princes because he had given away some of their land already as spoils for his allies and because of this the treaty failed to give the princes enough incentive to surrender and establish a general peace. The Peace of Prague "only hardened [the Protestant's] stance against him and reaffirmed their alliance with Sweden."[42] It marked a turning point in the war - as the Protestant leaders were reaffirming their

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[38] *The Edict of Restitution (March 6, 1629)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 49.
[39] *The Peace of Prague (May 30, 1635)*, *Experiencing the Thirty Years War*, eds. Hans Medick and Benjamin Marschke (Boston: Bedford/St. Martin's, 2013), 164.
[40] Leo Gross, "The Peace of Westphalia, 1648-1948," *The American Journal of International Law* 42, no. 1. (January 1948): 21.
[41] *The Peace of Prague (May 30, 1635)*, *Experiencing the Thirty Years War*, 165.
[42] *The Peace of Prague (May 30, 1635)*, *Experiencing the Thirty Years War*, 165.

alliance with Sweden, Swedish troops that had been busy with an unrelated conflict were freed up and were able to come and contribute to the war effort. "Sweden's subsequent victory at the Battle of Wittstock in 1636 broke the momentum of the Catholic imperial side, and the war would continue on for more than a decade."[43] Now, the imperial Catholics were not winning battles as before. The Peace of Prague marked the beginning of a new phase rather than signaling the end of the war.[44]

Ending the war took many more years, beginning with the Hamburg Peace Preliminaries in 1641. The warring parties agreed to meet to begin drawing up the treaties.[45] Hamburg was chosen because it was a financial center that was considered neutral by all the countries. While the agreement that resulted from these meetings determined the form of the ensuing Congress that met in Münster and Osnabrück in 1644 it did not determine the contents of the treaties.[46] The Treaty of Münster was signed first on May 15, 1648 and the Treaty of Osnabrück which officially concluded the war was signed on October 24, 1648.

1.2 The Peace of Westphalia

1.2.1 Historical and Political Overview

The product of the four-year Congress of Westphalia, the Peace of Westphalia was actually two treaties that, together, form the complete agreement between the Holy Roman Empire and the rest of the European powers. According to the historian Tryntje Helfferich, the negotiators "introduced the modern conference, or congress, system of diplomacy...and laid the foundation for the modern European system of states."[47] The Congress of Westphalia took so

[43] *The Peace of Prague (May 30, 1635)*, *Experiencing the Thirty Years War*, 165.
[44] Hans Medick and Benjamin Marschke, *Experiencing the Thirty Years War, A Brief History with Documents* (Boston: Bedford/St. Martin's, 2013), 163.
[45] Wilson, *The Thirty Years War*, 303.
[46] Wilson, *The Thirty Years War*, 278.
[47] Medick and Marschke, *Experiencing the Thirty Years War, A Brief History with Documents*, 171.

long to draft the Peace because the Holy Roman Empire was trying to maintain the structure of electors, princes, and imperial cities within the composite sovereignty system. He hoped to protect the structure of his kingdom and his power, an issue over which the war started was because the territorial estates wanted to "cut out the middleman" and go to the Emperor themselves instead of going through the princes. The princes did not want to lose power that they had acquired during the war and the constant military developments made negotiations difficult as each party kept holding out for a clear victory.[48] Helfferich concluded that "no one could claim a decisive victory and the war ended out of sheer exhaustion."[49] The two treaties were composed and signed a little over 35 miles away from each other in the cities of Münster and Osanbrück. While they have some very similar - even identical - clauses, there are some elements that are slightly different or are absent from the other treaty.

The Peace of Westphalia was a "religious, political, and territorial compromise."[50] Just as religion played such a large role in the Thirty Years War, it also played a large role in the structure of the peace negotiations and the accepted clauses. Catholic France and its allies were negotiating from Münster while Protestant Sweden and its allies were stationed in Osnabrück. This alignment meant that the Catholics and the Protestants, respectively, were each separately negotiating with the Holy Roman Empire, seeming to reinforce an assumption that religion played a large role in the war, and continued to do so. France, reportedly, did not want to make any concessions that would undermine the authority of Catholicism.[51] Another reason that the belligerents may have conducted two separate negotiations was because they saw these conflicts as two separate wars waged separately over different time frames; the Holy Roman Empire

[48] Helfferich, *The Thirty Years War*, xvii.
[49] Helfferich, *The Essential Thirty Years War*, xx.
[50] Helfferich, *The Essential Thirty Years War*, 82.
[51] Wilson, *The Thirty Years War*, 303.

against the Swedish in 1630 and another against the French, which began in 1635.[52] This would make sense because, yet a different concurrent war, the Eighty Years War, was settled during the negotiations at Münster, which this paper examines later. All of these strategies suggest a strong religious component to the war and structure of the negotiations.

The Peace "resolved religious conflicts that had been so intertwined with all the other issues driving the war" by "remov[ing] the right of the princes to set the religion of the territories."[53] However, this provision did not remove their right to "regulate [their] established territorial religions."[54] The Peace was certainly ambitious and, by taking away the right of princes to establish the religion of their provinces, the Peace allowed for multiple religions within a region instead of just the one set by the ruling prince. Whether or not it truly ended all religious wars is debated, however, it did decisively break the cycle of religious wars that Europe was in at the time.[55] The Peace mitigated the tensions within Christianity. There was a definite change in the role of religion in politics after the Peace was signed.

Even as it was being drafted, the Peace of Westphalia also aimed at resolving conflict outside the scope of the Thirty Years War. It should be noted that almost every major European power at the time was involved with at least one of the treaties.[56] The Spanish-Dutch War (1568-1648) and the Franco-Spanish War (1635-1659) were both being waged at the same time and a part of the peace negotiations. The Holy Roman Empire and Spain had both been part of the

[52] Wilson, *The Thirty Years War*, 303.
[53] Helfferich, *The Essential Thirty Years War*, 83.
[54] Helfferich, *The Essential Thirty Years War*, 83.
[55] Thompson, *War and Religion After Westphalia, 1648-1713*, 50. Thompson argued that there were problems with the assertion that wars of religion changed after Westphalia and that there was "too much pressure" on it to be a turning point (51). In his analysis of European wars after the Peace, he found that religion continued to be a factor in politics and, therefore, war. He first showed that the claim that the Peace was a turning point has evidence, that many scholars upheld it, and concluded that while there was a change it was not as rapid or definite as it was accepted to be.
[56] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 11-12.

Habsburg Empire and ruled under Charles V. When Charles V abdicated, he did not leave an heir and his kingdom was divided up, but the old political and religious affinities still existed.[57] Thus, Emperor Ferdinand III of the Holy Roman Empire was naturally inclined to support his dynastic kin, the King of Spain Philip IV, in his war against the French. "Peace in the Empire came when Emperor Ferdinand III finally granted French demands and promised not to support Spain in the ongoing Franco-Spanish conflict" in the Treaty at Münster.[58] The Spanish-Dutch conflict was resolved within the Congress of Westphalia and the Treaty at Münster. The Franco-Spanish conflict was not resolved until later with the Peace of the Pyrenees (1659).[59]

The Peace of Westphalia also changed the political structure of the Holy Roman Empire. It arranged "for an equal number of Protestant and Catholic deputies to be seated at imperial diets."[60] This division was important as it ensured Protestant representation in this important political body and, thus, it ensured that there was change in the political structure and debates of the Holy Roman Empire.

The terms of the Peace meant that the Empire was no longer "Holy" because its princes and populations were no longer all (or even a majority) Catholic. The Empire had was now more diverse where it had previously been unified before the Reformation. Voltaire commented that "this agglomeration which was called and which still calls itself the Holy Roman Empire was neither holy, nor Roman, nor an empire."[61] The protections that were afforded to Protestants changed the government's view of itself and simultaneously diluted and disregarded the authority of the office it had previously been subject to - the Catholic Pope. The negotiators "agreed to

[57] *The Religious Peace of Augsburg (September 25, 1555)*, *Experiencing the Thirty Years War, A Brief History with Documents*, 46.
[58] Wilson, *The Thirty Years War*, 304.
[59] Wilson, *The Thirty Years War*, 303-4.
[60] Helfferich, *The Essential Thirty Years War*, 82.
[61] Voltaire, *Essai sur l'histoire générale et sur les moeurs et l'esprit des nations*, (Oxford: Oxford University Press, 2018) chp. 70.

ignore any formal protests that the papacy might lodge to the exchange of territories envisioned by the settlement."[62] The Pope did, in fact, protest the Peace because it made concessions to the Protestants. His issued the Bull *Zel Domus* in November of 1648. The diplomats anticipated this and decided to uphold the treaty instead of the power of the Catholic church. This event is considered to be "evidence of a papal withdrawal form European diplomacy." [63]All these changes ensured that a new political system was created to accommodate the new religions that were developing.

1.2.2 Treaty Contents

The treaty at Osnabrück is named *Instrumentum Pacis Osnabrugensis* (IPO) and the treaty signed at Münster is named the *Instrumentum Pacis Monsterieusis* (IPM).[64] While the majority of each of the treaties corresponds with each other and many of the clauses are identical, there are still several differences concerning territories that exchanged and conceded. The chosen principal text with the treaties, *The Essential Thirty Years War* by Tryntje Helfferich, translates and copies comprehensively only the IPO. When a clause differs, Helfferich either notes that the clause in the IPO was not in the IPM or provides the excerpt of the clause that was in the IPM and not the IPO at the end of the chapter. Therefore, the IPO will be the one that is primarily considered.

Both treaties begin with the usual praises of all the ruling parties involved. This formed the obligatory acknowledgements found in most treaties during this time period. Ferdinand II and III of the Holy Roman Empire, Gustavus Adolphus and Lady Christina of Sweden, Philip of

[62] Thompson, *War and Religion After Westphalia, 1648-1713*, 49.
[63] Thompson, *War and Religion After Westphalia, 1648-1713*, 50.
[64] Helfferich, *The Essential Thirty Years War*, 82.

Spain, and Louis XIV of France are all mentioned, and their full titles given. Having concluded the recitation all of the individual monarch's titles, the treaties move on to talk about amnesty.

The Article II dealt with the specifics of granting amnesty to those involved in the war. The goal of this clause seems to be to grant as many people amnesty as possible so that resentments over the past war could not be used to incite future conflict. The negotiators offer a "perpetual oblivion and amnesty" for the constituents.[65] The next article of note is Article IV which dealt with the establishment and passing of a specific territory.[66] Important to note from this article is that the amnesty was further underlined in Section Fifty-one, where it stated that there should be no prejudice towards any of the soldiers, officers, their families, or anyone else involved with the war.[67]

Article V dealt with reconciling the politics before the war with the new political system that was emerging. Section One talks about the treaties that were agreed upon before the war began. Several treaties were confirmed as still valid: The Treaty of Passau (1552) and the Religious Peace (1555) which was confirmed in 1566 at Augsburg, otherwise known as the Peace of Augsburg.[68] The Peace of Passau was between Emperor Charles V and the Protestant leaders. Charles V lost the war against the Protestants and was forced to give them protections that he had previously resisted granting. This eventually grew into the Religious Peace or Peace of Augsburg.[69] As stated earlier, the Peace of Augsburg attempted to smooth the rising tensions but ultimately failed and contributed to the Protestant rebellion against the Emperor. It attempted to protect subjects that ascribed to a different religion than the ruler of their territory by allowing

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[65] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, trans. and ed. Tryntje Helfferich (Indianapolis, IN: Hackett Publishing Co., Inc., 2015), 85.
[66] The electorate of Palatinate.
[67] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 86.
[68] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 87.
[69] Helfferich, *The Essential Thirty Years War*, xii.

them the right to emigrate from their territory to another. [70] The Peace of Westphalia took this further in Section Thirty by forbidding territorial rulers from coercing their subject to join their religion. Section Two in Article V was concerned with resetting the political structure and territories to whoever owned them as of January 1, 1624. The list of returned territory included the cities of Augsburg, Dinkelsbühl, Biberach, and Ravensburg.[71] After setting up a new government in Augsburg, Section Fourteen redistributed certain religious properties (e.g., church grounds) to whoever occupied them on the aforementioned date. If the property was not mentioned, then the current owners would retain the property. Section Fifteen states that if anyone of religious authority (e.g., an archbishop, bishop, etc.) were to change religions then they should be allowed to do so peacefully and honorably so long as they surrender "their rights, property and income" to the church they are leaving for the next person appointed. Section Forty-one was a clause that outlines the general purpose of the Peace well:

> And since all the efforts that have been made to negotiate a greater freedom of religious exercise in the above-mentioned lands, as well as in the rest of the kingdoms and provinces of [the Holy Roman Emperor], have come to naught due to the opposition of the imperial plenipotentiaries, Her Royal Majesty of Sweden and the estates of the Augsburg Confession reserve for themselves the right to intervene amicably and intercede humbly with His Imperial Majesty at the next diet or elsewhere; yet the peace shall always endure and all violence and hostility shall be prevented.[72]

While the Peace extended the previously given rights to other religions besides Catholicism, it did not go as far as the Protestant leadership in Sweden wanted it to, as evidenced in the quote above. The Queen wanted to be able to ensure that the Holy Roman Emperor would enforce the rights that the Protestants were fighting for. The focus of the negotiations, however, remained on peace and feasible resolutions to discontent later on. Section Fifty-one dealt with distributing

[70] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 90.
[71] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 88.
[72] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 92.

votes at the imperial diets accordingly. The Peace dictates that number of representatives for Catholics and Protestants are to be equal. No matter the level of meeting or the amount of people both religions were to be represented equally, except when the matter concerns a dispute that only concerns one of the religions. Section Fifty-two prohibits matters being decided by a majority vote, which makes sense because in a dispute everyone would probably vote according to their religion and the previous section dictates that each religion should make up half the representatives. Therefore, a majority vote would accomplish nothing. Instead, the section encourages "amicable agreement."[73]

In Article VI, the Congress established the nation of Switzerland. Article VII addressed the Calvinist population, which was something that the Peace of Augsburg had failed to do.[74] The Congress states in Section One that they are focused on "preserving everyone's freedom of conscience."[75] The leader of a province could change the official religion to whatever he wanted but he could not enforce it on his population nor discriminate against other religions. While it was, "his region, his religion," this protects the Prince of the province from the Emperor. Protestant governments, such as Sweden, also wanted to protect Protestants within provinces that had a Catholic prince. Thus, this and the next section are included to afford them that protection. Section Two protects the community and gives them the right to embrace a different religion, such as Calvinism which was in the minority.

The Congress of Westphalia addressed the Holy Roman Empire's imperial estates in Article VIII. In Section One they set a strong precedent protecting the rights of the people in the Holy Roman Empire:

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[73] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 94.
[74] Both the Peace of Augsburg and the Peace of Westphalia neglected to provide protections for the Jewish population, they focused solely on Christianity.
[75] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 95.

> In order to ensure, however, that no future disputes arise over the state of politics, each and every elector, prince, and estate of the [Holy] Roman Empire shall, by virtue of the present treaty, be established and confirmed in, and enjoy possession of, all their ancient rights, prerogatives, liberties, privileges, dominions, regalia, and free exercise of their territorial rights in both ecclesiastical and political affairs, so that, in fact, they neither can nor shall be molested by anyone at any time, for any pretext whatsoever.[76]

This section does two things at once. First, it protects the elaborate political system that the Holy Roman Empire employed before the war which was one of the grievances against the Empire that contributed to the war. Second, it protects not only the elector's authority but the rights of the Princes of the territorial estates in the Empire in political and religious (ecclesiastical) issues. This section made the Holy Roman Emperor an arbiter between the estates. In Section Two the rights are more clearly outlined. The estates can bring their grievances and criticisms to the "deliberations about the affairs of the empire, especially in the consideration or interpretation of laws, the declaration of war, the imposition of taxes,...the quartering of soldiers, the raising of new fortifications within the sovereign territory of the estates" as well as make alliances directly with other countries.[77] This section makes it clear that while the princes and electors are still in charge, the territorial estates now have the right to advocate for themselves in new ways, including alliances. The ability to make alliances may have been crucial for Protestant estates because it allowed them to directly open a dialogue with other Protestant countries - such as Sweden - to protect themselves even more.

Article X dealt with payments to Sweden for them returning occupied territory to the Empire. Article XI outlines the elector of Brandenburg's - Frederick William - territory and payment. The next article that Helfferich included was Article XVI Section Eight that disbanded

[76] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 96.
[77] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 96-97.

the Swedish army and required that certain estates in the Holy Roman Empire pay a sum to contribute to the disbanding of their army. This concludes the treaty in full.

1.3 Early Interpretations

The Peace of Westphalia is considered to have marked a turning point in European history. For example, historians Hans Medick and Benjamin Marschke proclaimed it a "watershed in the political development of Germany and the balance of European great power politics, but also as the establishment of a system of norms and a legal understanding of European international relations that would endure for centuries."[78] This new understanding not only underpinned the beginnings of "balance of power" politics, but it also contributed to the debate about how to understand of the character and development of nations.

The political and academic implications of the Peace of Westphalia focused considerable scholarly attention almost immediately. Three major early-modern scholars - Emmerich de Vattel and Hugo Grotius - recognized the importance of the Peace to the development of, what was called at the time, the "law of nations." While these scholars did not explicitly use the phrase "sovereign equality," its meaning was integral to the law of nations.

They linked what they argued were the rights of men to the rights of nations. They argued that the power of any government comes from each individual man giving up a portion of his own power and independence to submit to said government. While the law of nations developed from different principles or implicated different maxims for each of these three men, they all arrived at the same understanding of what the law should entail.

De jure belli ac pacis (On the Law of War and Peace), was written by Hugo Grotius - a Dutch philosopher who lived from 1583 to 1645 - was influential in establishing international

[78] Medick and Marschke, *Experiencing the Thirty Years War, A Brief History with Documents*, 163.

law as we know it.[79] "By many accounts, he was the first thinker to articulate a concept of a law that" bound states.[80] Grotius' influence was the result of how he addressed a relevant topic in a unique way by adapting "the older ideas to new conditions; thus, the idea that international society was organized on a feudal basis was wiped out in the century of the Reformation."[81] He argued that the law of nations "was the basis for society and this the ultimate origin of law...was through [men's] consent."[82] His work was one of the first to discuss the law of nations and he greatly influenced Emmerich de Vattel's work on the topic. While this paper cannot discuss Grotius at length, he is worth mentioning as the father of international law.

In his extensive work *The Law of Nations or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns: A Work Tending to Display the True Interest of Powers* (1758), Vattel outlined the law of nations and its development very clearly. Vattel was a student and upholder of Grotius and, therefore, many of his views were similar to those of Grotius.[83] It is important to note that Vattel's work was completed in 1758, 110 years after the Peace of Westphalia. But this work was still in close enough to examine its immediate aftermath with authority. In order to outline this law this effectively, relevant terms must be defined. The definition of a nation was a "body politic, or a society of men united together to promote their mutual safety and advantage by means of their union."[84] Vattel also explores how and why men come together to form societies; while he thinks men are inherently selfish and motivated by

[79] P. H. Winfield, *The Foundations and Future of International Law* (Massachusetts: Cambridge University Press, 1941), 18.
[80] Anthony Clark Arend, "The evolution of international law." *The Cambridge World History*, (Cambridge: Cambridge University Press, 2015) 287.
[81] Winfield, *The Foundations and Future of International Law*, 19.
[82] Arend, "The evolution of international law." *The Cambridge World History*, 287.
[83] Gross, "The Peace of Westphalia, 1648-1948," 36.
[84] Emmerich de Vattel, *The Law of Nations; or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns. A Work Tending to Display the True Interest of Powers* (Northampton, Massachusetts: Simeon Butler, 1820), 57.

their own self-preservation, he believes that men are also incapable of preserving their own rights and must form societies to better protect themselves.[85] In addition to being a united body of individuals, "every nation that governs itself, under what form soever, without any dependence on foreign power, is a sovereign state."[86] Here, Vattel was defining what a sovereign government looks like, which will support his discussion of the equality between sovereign governments. Vattel's definition of treaty is also important to look at. A treaty was "a pact made with a view to the public welfare by the superior power, either for perpetuity, or for a considerable time."[87] Vattel defined a number of terms for the diplomats and government officers of his time.

Vattel defined the law of nations as "the science of the law subsisting between nations and states, and of the obligations that flow from it."[88] The law stems from the rights that each man individually possesses that he gives over to the state that rules him, granting them the authority to act on his behalf:

> Since men are naturally equal, and their rights and obligations are the same, as equally proceeding from nature, nations composed of men, considered as so many free persons living together in the state of nature, are naturally equal, and receive from nature the same obligations and rights.[89]

Because all men are equal and all nations are made of men, all nations are, therefore, equal to each other. He further underscored this point by concluding that the "necessary consequence of this equality" was that what was allowed or forbidden for one country was allowed or forbidden for the rest. He went further and stated that "Nations being free, independent, and equal, and

[85] de Vattel, *The Law of Nations*, 194.
[86] de Vattel, *The Law of Nations*, 58.
[87] de Vattel, *The Law of Nation*, 256.
[88] de Vattel, *The Law of Nations*, 47.
[89] de Vattel, *The Law of Nations*, 52. See also "This authority belonged originally and essentiality to the body of the society, to which each member submitted, and ceded the rights he received from nature..." pg. 69.

having a right to judge according to the dictates of conscience...the effect of all this is...a perfect equality of rights between nations, in the administration of their affairs."[90] This is the definition of sovereign equality, even though Vattel did not expressly name it.

The law of nations had application to relationships between the state and religion as well. This relationship was debated throughout the Peace of Westphalia and Vattel addressed it as well. He claimed that there should not be any religious wars because "what right have men to proclaim themselves the defenders and protectors of the cause of God?"[91] Therefore, countries should not go to war over religion but convict people with different methods, such as sending out missionaries.[92] He continued detailing the rights of countries that would want to intercede when there was religious persecution in another country. "When a religion is prosecuted in one country, the foreign nations who profess it may intercede diplomatically through non-violent means for their brethren" but that is all they can do until the persecution reaches an "intolerable excess," thereby transforming the issue from religious persecution to an act of tyranny.[93] Only then can a country directly interfere and stop the government of another country. The phrase "intolerable excess" is inherently vague and Vattel does not define it any further. The interpretation of this phrase would be left to the victor of the war.

Vattel then turned his attention to the role of the Catholic Pope in international law and society. He argued passionately that the Pope's role was destructive and that there were "enormous abuses the popes have formerly introduced by their authority" and found that the Pope's actions and authority are inconsistent with the law of nations.[94] One of the examples

[90] de Vattel, *The Law of Nations*, 53. See also "...that nature has established a perfect equality of rights between independent nations." pg. 209.
[91] de Vattel, *The Law of Nations*, 218.
[92] de Vattel, *The Law of Nations*, 218.
[93] de Vattel, *The Law of Nations*, 219.
[94] de Vattel, *The Law of Nations*, 294.

Vattel specifically utilized to support this point was the Peace of Westphalia because the Pope at the time[95] was very displeased about some of the articles in the treaties. The Pope "published a bull, in which, from his own certain knowledge, and full ecclesiastical power, he declared several articles in the treaty null...and that nobody was bound to observe them." The Pope takes on "the tone of an absolute master" and "sap[s] the foundations of [the countries'] tranquility. [96] This critique of the Pope is critical because it shows the ending of the previous system and the beginning of the new one that we rely on today. Before the change, the Pope's authority was much stronger, and he had the power to settle matters between European states. When the Reformation happened, several countries refused to be subject to the Pope's secular authority, as well as princes and villagers within Catholic states like the Holy Roman Empire. A system based on sovereign equality is what replaced the Pope.

Echoing Grotius and Vattel, P. H. Winfield observed that in some circumstances the sovereignty of another state might be violated by other states. For example, such acts included humanitarian crises (genocide, persecution, oppression) or if they attacked another sovereign state unjustly. As Vattel had argued, while all of the states together did not have "any authority over the conduct of any one"[97] other country, intervention was allowed under certain circumstances. This helped to distribute power evenly and keep all of the states in check. There were three ways an outside state could intervene in another one, according to Winfield. Internal intervention was when State A interfered between conflicting entities within State B. When State A interfered with relations between State B and State C, they used external intervention. Lastly, punitive intervention was when State A attacked State B and State B responds in any way that is

[95] Pope Innocent X.
[96] de Vattel, *The Law of Nations*, 295.
[97] de Vattel, *The Law of Nations*, 54. See also "Every nation, every sovereign and independent state, deserves consideration and respect, because it makes an immediate figure in the grand society of the human race..." pg. 208.

not a declaration of war (a blockade or embargo).[98] The law of nations requires states to "preserve itself...and its members." [99] Independence and sovereign equality are essential for a state to do its duty to the people that give it authority. Any nation that interferes with another's duty was infringing on their rights.

[98] Winfield, *The Foundations and Future of International Law*, 32-33.
[99] Clarke, Thomas Brooke, *An historical and political view of the disorganization of Europe: wherein the laws and characters of nations, and the maritime and commercial system of Great Britain and other states, are vindicated against the imputations and revolutionary proposals of M. Talleyrand and M. Hauterive* (London: T. Cadell and W. Davies, 1803), 2. All of the information for this paragraph comes from this source and page.

2. THE LEGACY OF THE PEACE OF WESTPHALIA

2.1 The Treaty of Utrecht

The Treaty of Utrecht resolved the Spanish War of Succession, which had gone on for 12 years from 1702 until April 11, 1713.[100] The war was between France, with Spain, and the "Great Alliance," which included Great Britain, Holy Roman Empire, the Dutch Republic, and Prussia. While the treaty "brought about a prolonged period of peace in Europe, it also inaugurated the age of aggressive 'balance of power' politics."[101] The treaty resolved tensions until the War of the Austrian Succession in 1740. One of its more striking features is that it did not discuss religious matters. This supports the claims that the Peace of Westphalia ended the cycle of religious wars in Europe. While the treaty itself does not invoke or discuss religion, the "plenipotentiaries submitted a declaration of support for suppressed religious minorities" on the same date as the treaty was signed.[102] The negotiations introduced, what scholars now call, the concept of "performing" diplomacy, wherein the diplomats would make a big show, feast, and uphold traditions in public negotiations but the real negotiating would happen informally behind closed doors.[103]

The war began because the Spanish throne was empty. The French monarch, Louis XIV wanted to place his grandson and heir, Philip V, on the Spanish throne so that, one day, the two thrones would be ruled by the same person. Spain accepted his nomination because he was of Spanish blood. The Peace of the Pyrenees (1659), from earlier in this paper, required that Louis

[100] Renger E. de Bruin, Cornelis van der Haven, Lotte Jensen, and David Onnekink, *Performances of Peace: Utrecht 1713* (Leiden: Brill, 2015), 3.
[101] de Bruin, van der Haven, Jensen, and Onnekink, *Performances of Peace: Utrecht 1713*, 3.
[102] de Bruin, van der Haven, Jensen, and Onnekink, *Performances of Peace: Utrecht 1713*, 3.
[103] de Bruin, van der Haven, Jensen, and Onnekink, *Performances of Peace: Utrecht 1713,* 4, 9.

XIV marry a Spanish princess to help the countries made amends.[104] The Great Alliance saw this as a consolidation of power between the Spanish and French thrones[105] and did not want that to happen as France would become too powerful and potentially upset the balance of power by becoming a universal monarch, like the Habsburgs. The Peace of Westphalia had established the foundation for this phase of European politics wherein the "balance of European great power" must be kept.[106] The belligerents saw the wars as a "struggle of domination for the continent."[107] Despite the rest of the European leaders' wariness of French motives, the Spanish government had worked out a deal with the French and wanted Philip V to succeed to the throne.[108]

The war mainly originated because of issues within the European continent but its reach and influence went beyond that. The treaty was one of the first to involve the colonial trade and the Atlantic Exchange. The colonies, primarily those in the Americas, played an important role in and contributed to the war. The European colonizing countries were all trying to increase their own commerce and power in the Atlantic. The colonies played such a large role because they were generating a lot of money for their colonizer. While Spain only provided six percent of the goods coming to Europe, their armada protected and maintained the trade, which made control of the Spanish throne very important.[109] Trade played such a role that merchants were called as experts to the negotiations with diplomats.[110] Historian Lucien Bély observed that "for English and Dutch merchants, as well as for their governments, the main danger with a French prince as the king of Spain was the benefits that the French economy could reap, especially through direct

[104] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 21.
[105] Lucien Bély, *Performances of Peace: Utrecht 1713*, 40.
[106] Medick and Marschke, *Experiencing the Thirty Years War, A Brief History with Documents*, 163.
[107] de Bruin, van der Haven, Jensen, and Onnekink, *Performances of Peace: Utrecht 1713*, 2.
[108] Bély, *Performances of Peace: Utrecht 1713*, 40.
[109] Bély, *Performances of Peace: Utrecht 1713*, 41.
[110] Bély, *Performances of Peace: Utrecht 1713*, 40.

access to the wealth of Spanish America."[111] This danger was very real for Great Britain and the Dutch Republic but the Spanish government did not give into France easily. The Spanish did want Philip V to rule but they also "maintained the uniqueness of [their] system and defended [their] independence."[112]

The importance of the Treaty of Utrecht should not be underrated, as it had been by current scholars. This treaty had often been "ignored in international relations textbooks or downgraded." [113] This treaty was usually commemorated and remembered less than the Peace of Westphalia. While how much a treaty is commemorated is usually indicative of its importance, some scholars argue that the Treaty of Utrecht "superseded Westphalia" and "that where the Peace of Westphalia failed to achieve stability in Europe, the Peace of Utrecht [succeeded] in creating a functional alliance system." This more functional alliance system developed from sovereign equality. Under this concept, all states are considered equal before the law, but they are not all equal in power. Because some states are weaker than others, the stronger often take on the responsibility of protecting the weaker.

Most of the countries involved came out of the war with very little or no success. The Dutch did not come out with anything to show for their involvement and neither did the English. The French won the war and Philip V became the next king of Spain, but he had to give up his right to the French throne. The French also lost part of Canada and Newfoundland which had harsh consequences. Spain lost some of its power in Europe and in the Americas.[114] Only the king of Prussia was satisfied with how the war ended.[115]

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[111] Bély, *Performances of Peace: Utrecht 1713*, 42.
[112] Bély, *Performances of Peace: Utrecht 1713*, 42.
[113] de Bruin, van der Haven, Jensen, and Onnekink, *Performances of Peace: Utrecht 1713*, 6. All of the information for this paragraph comes from this source and page.
[114] Bély, *Performances of Peace: Utrecht 1713*, 50.
[115] Bély, *Performances of Peace: Utrecht 1713*, 51.

Sovereign equality was discussed in several different ways in this Treaty. The war itself involved multiple countries interfering with another country's succession crisis. These countries should not have intervened, according to sovereign equality and the law of nations. The only instance where it was acceptable to invade another country was if there was an "intolerable excess" of persecution happening, as Vattel described. [116] However, under the balance of power doctrine, these States felt compelled to intervene. During the war, the French asked for the Pope to come in and resolve the issue. The Pope declined to do so and called the proposal absurd.[117] The Treaty did secure a balance and made it law that the French and Spanish throne could never be held by the same person in order to maintain that balance. The Treaty did not directly invoke the Peace of Westphalia, but sovereignty undoubtedly played a large role in this war and its treaty.

2.2 The Treaty of Aix-la-Chapelle

The War of Austrian Succession, which lasted from 1740-1748, was resolved by the Treaty of Aix-la-Chapelle. The war began because of the revocation of the agreement between Charles VI and the powers of Europe that his daughter would inherit his throne, or the Pragmatic Sanction. Emperor Charles VI wanted his daughter, Maria Theresa, to inherit the throne and have her husband elected Emperor.[118] Many powers within and outside the Empire ratified the sanction. However, when Charles VI died on October 20, 1740,[119] Prussia invaded, the Elector of Bavaria, Fredrick II, was elected Emperor, and a league was formed to oppose Maria Theresa (composed of many of those who guaranteed the sanction). When peace was finally declared,

[116] de Vattel, *The Law of Nations*, 219.
[117] Phil McCluskey, *Performances of Peace: Utrecht 1713*, 119.
[118] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 26.
[119] David Jayne Hill, *A History of Diplomacy in the International Development of Europe*, (London: Longmans, Green, and Co., 1925) 448.

Prussia kept the territory it invaded and the Elector of Bavaria kept the crown.[120] The war was a stalemate with no one winning decisively - Great Britain won on the sea but France won on land.[121]

When the Solution was revoked, the Empire was too weak to resist. The Emperor could have potentially secured the succession more securely, but it was too late. "Within the Empire the medieval idea of local independence had survived its disappearance in the great centralized monarchies. Since the Peace of Westphalia, the princes had exercised a recognized sovereignty within their own dominions...".[122] The concept of sovereign equality had influenced these regions and when there was a chance for the Elector of Bavaria to take over the monarchy, he took it. France had a heavy hand in the coup and installed Fredrick II on the Imperial throne.

2.3 The Congress of Vienna

The Congress of Vienna set out to end the Napoleonic Wars in 1814. Napoleon I's conquests included Holland, Belgium, parts of Germany, and Northern Italy. He also had influence over Naples because he made brother-in-law was the King.[123] He abdicated in 1814, the Bourbons took over the government, and then he was banished to Elba. While the Congress was in session (from 1814-1815) to settle with all of the countries he had invaded, Napoleon returned and took over again until he was decisively defeated at Waterloo in June of 1815.[124] With the Napoleonic War then finished, the Congress resumed. Almost every European power was present at the Congress, except for Turkey.[125]

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[120] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 28.
[121] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 29.
[122] Hill, *A History of Diplomacy in the International Development of Europe*, 451. All of the information for this paragraph comes from this source and page
[123] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 35.
[124] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 36.
[125] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 12.

The Congress was focused on several principal matters. First was the state of the old Holy Roman Empire, which failed when Napoleon invaded. To remedy this, the Congress established the German Confederation. The Empire was falling apart for several reasons. The Peace of Westphalia had given the princes an ambiguous status that included independence while still remaining subordinate to the Emperor. And, the War of the Austrian Succession had further crippled the Empire.

Napoleon's Confederation of the Rhine, under which he put all of his conquered territories in Central Europe, had largely kept the area stable. He reduced the vast composite system of the Holy Roman Empire from about eighteen-hundred down to thirty-six states. However, after his defeat it fell on the Congress of Vienna to address it. Instead of creating a reorganized Empire, the Congress established the German Confederation. It was ruled jointly by Austria and Prussia with Diets in Frankfurt. This system, as one would expect with there being two leaders, was slow and often ineffective in its administration "but it saved Germany from attack, while its very defects gave it the merit of being unaggressive."[126] The Confederation did not last partly due to the divided attention the sovereigns in charge. They were over two separate territories, each with their own composite territories and unique systems. Once a dispute over the territory emerged, the Confederation fell apart and was officially dissolved by the Treaty of Prague in 1866.[127]

The second matter that the Congress of Vienna dealt with was providing protection for the German Confederation and redrawing the map of Europe at that time so that it kept the balance of power in Europe. Great Britain and Denmark both gained some territory.[128] The

[126] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 37.
[127] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 39-40.
[128] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 41.

Congress dealt fairly with France, according to Phillimore. However, this was because France was one of the great powers in Europe and it needed to be preserved to that the balance of power could be maintained. For this reason, the Congress reinstated the Bourbons to the throne and restored their previous power. This part of the treaty did not give rise to later dispute.[129]

The third issue that the Congress attempted to resolve was putting the countries that Napoleon invaded back together. In this aspect, the Congress failed miserably. They did not succeed in creating lasting peace in Italy, the Netherlands, Norway, Sweden, Holland, Belgium or Poland. The Congress attempted to join Norway to Sweden and Holland to Belgium. Norway and Sweden lasted until 1905 but Holland and Belgium broke apart by 1831.[130] Poland was already partitioned three times when Napoleon invaded the area. Some of the soldiers that fought under him were Polish and to reward them Napoleon created and gave them the Grand Duchy of Warsaw. The Congress of Vienna took this duchy and made the Kingdom of Poland with the Emperor of Russia as the sovereign.[131] The Congress did attempt to provide for Polish rights in its stipulations to protect them regardless of who ruled.

From this Congress came the Concert of Europe. According to political scientist Leo Gross, the Concert was a "self-appointed directing body for the maintenance and manipulation of that balance of power on which the European peace precariously reposed for about a hundred years." [132] It was loosely organized and fairly underdeveloped compared to the League of Nations and United Nations. There was no obligation required of the "Great Powers" and they

[129] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 43.
[130] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 48.
[131] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 57-58.
[132] Gross, "The Peace of Westphalia, 1648-1948," 20. All of the information for this paragraph comes from this source and page.

met more out of self-interest than anything else. However, thy did meet and intervened in several political crises after 1815, such as Greece and Belgium.

The Congress definitely did not completely uphold sovereign equality. But it still was a step in its development. "In spite of the Congress of Vienna... the devolution of power to the level of the individual sovereign state...has permitted political and military adventures on the part of autonomous secular polities unconstrained by any limiting powers of an inter- or transnational sort..."[133] While the Congress did not adhere to the principle, individual states retained power and were able to act unimpeded by the desires of the Concert of Europe.

2.4 The Treaty of Versailles

World War I began with the assassination of Archduke Franz Ferdinand in 1914 and lasted until 1918. It was resolved with the signing of the Treaty of Versailles in June 1919. This resolution outlined The Covenant of the League of Nations, blamed Germany for starting the war, and defined what the new boundaries of Europe and reparations were.

The Treaty had fifteen parts to it and three hundred and eighty-six articles. For brevity, this paper will not analyze every single article, but it will look at those that have to do with sovereignty and any other topics of note. [134] Part I of the Treaty outlines the duties and structure of the League of Nations and will be examined in a later section. Part II redrew the boundary of Germany, included a map, and defined pertinent terms.

Part III sets out the political clauses of the Treaty. Articles Thirty-one and Thirty-two stated that Germany was to acknowledge that Belgium was a sovereign state. Germany had not agreed to the Treaty of London in 1839 which had established Belgium as a state. Here, the

[133] Newman, *Performances of Peace: Utrecht 1713*, 263.
[134] *The Treaty of Versailles (June 28, 1919)*, *The Treaties of Peace, 1919-1923*, ed. Lt. Col. Lawrence Martin (New York: The Carnegie Endowment of International Peace, 1924), 29-263.

diplomats were establishing the sovereignty of another state through the treaty. The articles in this section also attempted to establish a method by which people could switch their citizenship as the boundary moved.

In Section Two of Part III, the Grand Duchy of Luxemburg was reaffirmed. It was German territory but under this Treaty it became its own state.[135] Section Three imposes restrictions on Germany's movements along the left bank of the Rhine River. Section Three of this part contains the clauses regarding Saar Basin - an area that Germany took over with several coal mines. This section reconciled how to transition this area to the French government while keeping the people's rights intact. Article Forty-nine offered a compromise between the land being a spoil of war and the people's right to have a say in who ruled them[136] by stating that after fifteen years the people of Saar Basin will vote to determine which government they would prefer to be subjected to - the French or German.[137]

Section five set out the decisions about Alsace-Lorraine. It claimed that the citizens of this territory were acquired by Germany against their wishes.[138] They were to be returned to France immediately. Section six only had one article, Article Eighty, which stated that Austria was to be separate from Germany. Section Seven pertains to the Czecho-Slovak State. They were to be separate from Germany, in the same way as Austria, but the Germans were allowed to retain a specific territory that was outlined.

In Article Sixty-two, it was required that the Czech State make a treaty with the Allied Powers for protection. This was an example of the protection system that the Charter of the

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[135] Article Forty.
[136] The Law of Nations states that the power of government comes from the governed giving up their own power.
[137] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 35.
[138] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 47. ".... which were separated from their country in spite of the solemn protest of their representatives..."

United Nations embodied later. Section Eight detailed the transition for Poland. They were no longer part of Germany but Article Eighty-eight required that a certain territory[139] hold an election to decide if they wanted to be a part of Poland or Germany.[140] Section Nine settled the territory of East Prussia. According to Article Ninety-four the citizens were to vote to decide whether they wanted to become part of Poland or their own state. Article Ninety-nine, the only article in Section Ten, merely stated that the territory of Memel[141] was given to the Allied Powers by Germany.

The topic of Section Eleven was the Free City of Danzig which was intended to be protected by the League of Nations. It was within the boundaries of Poland and the treaty implemented two measures to cultivate the city's relationship with the Polish government - Article One hundred-three dictated that the city must draw up a constitution and appoint a High Commissioner; in Article One hundred-four there was a "treaty" within the Treaty of Versailles between the city and Poland.[142]

Part IV was meant to control the interests of Germany - it is entitled "German Rights and Interests Outside Germany."[143] The first article, Article One hundred-eighteen, took away Germany's right to dispute the treaty and fight for their territories outside of the European continent. Section One addressed the German colonies - control was to go to the "the Government" in power there.[144] Whether or not that means some local government that was in power before the area was colonized or it was to go to another European power is unclear. Section Two navigated redefining the relationship between China and Germany. Germany was

[139] Upper Silesia.
[140] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 63.
[141] A swath of territory between East Prussia and the Baltic Sea.
[142] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 76.
[143] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 84.
[144] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 84.

required to relinquish their territory and any special privileges obtained through treaties. Section Three listed the details of Germany and Siam's relationship. Section Four did the same for Germany and Liberia's relationship. Section Five transitioned Morocco from German to French authority. Section Six did the same for Egypt and control of the Suez Canal, except that they were transitioned to British authority. Section Seven merely stated that the terms of Turkey and Bulgaria will be examined at a later time. Section Eight put Japan in charge of the territory of Shantung.

Part V will be covered more superficially because it detailed the military clauses which are not the focus of this paper. The treaty reduced the German military to a handful of units and did not allow them to produce submarines. Germany was also required to submit to the League of Nations if they requested to inspect their military.

The rest of the Treaty dealt with various topics. Part VI dictated what was to be done with prisoners of war and burials. Part VII laid out the penalties for Germany. Article Two hundred-twenty-seven "publicly arraigned" the German Emperor William II and demanded that the Netherlands, who had been giving him asylum, turn him over to be tried.[145] Part VIII outlined what Germany was to pay in way of reparations. Part IX contained the financial clauses. In Part X, the economic clauses, Article Two hundred-eighty-one, it was determined that "if the German government engage[d] in international trade, it shall not in respect thereof gave or be deemed to have any rights, privileges or immunities of sovereignty."[146] This article took away the sovereignty and rights of Germany as a result of its actions that took away the sovereignty of others. Part XI covered the clauses on aerial navigation. Part XII was focused on the ports,

[145] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 121.
[146] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 164.

waterways, and railways. Part XIII dealt with the issue of labor. Part XIV detailed the ways that the treaty was guaranteed. The final part, Part XV, contained miscellaneous provisions.

Sterling Edmunds, an international law lecturer at St. Louis University, analyzed the Treaty of Versailles side by side with his interpretation law of nations[147] in his book, *International Law and the Treaty of Peace*. Edmunds argued adamantly that the Treaty of Versailles did not uphold or act according to the law of nations - that "no modern treaty of peace has done this system such violence."[148] He saw that the law was "ignored or violated where it conflicts with the purposes of the respective Allied and Associated Powers."[149] Later, he remarked that there wasn't a peace treaty in modern times that was as severe as this one. The private citizens of Germany could not own land, trade, or a job.[150] The German government was not allowed to bury the dead - the entire process had to be approved by the Allied Powers, including monuments.[151] Edmunds commented that the Allies were expected to show more grace here than they did. The Allied Powers, as the winners of the war and those in power in Europe, had the opportunity to collectively decide to contradict the law when it suited their interests and took advantage of it. One thing that he did note the Treaty did well was that, in the way of dealing with German war criminals, it was "a wholesome step forward."[152]

However, it was not necessary for the powers to put all of the burden, blame, and reparations for the war on Germany. In Article Sixty-three, the Allied Powers officially decided that Germany, alone, was responsible because they provoked war unjustly. Edmunds commented that "while it is within the power of a successful belligerent to impose any terms he wishes, the

[147] Edmunds was mainly influenced by Vattel.
[148] Sterling E. Edmunds, *International Law and the Treaty of Peace* (Washington: Library of Congress, 1919), 3.
[149] Edmunds, *International Law and the Treaty of Peace*, 3.
[150] Edmunds, *International Law and the Treaty of Peace*, 31.
[151] Edmunds, *International Law and the Treaty of Peace*, 37.
[152] Edmunds, *International Law and the Treaty of Peace*, 3.

law of nations nowhere makes a distinction between a just and an unjust war, nor between a lawful and an unlawful war." [153] It was up to any government that declared war to decide what was just. Under the law of nations, war could not be unlawful from a moral standpoint "since it is the supreme and final appeal of all States in the protection of their well-being."[154] This is an interesting statement by Edmunds because the law of nations does make a claim about what is a just reason to invade a territory, according to Vattel.[155]

Edmunds, when he examined Part III of the Treaty, found several fallacies. In Article Thirty-two, the territory of Moresnet was annexed by Belgium with the Allied Power's consent but not the citizen's consent. In the eighteenth century, it was acceptable for the winner of a war to take conquered populations and make them part of their people. This was "no longer permissible, however, to hand such populations around, in view of the development of political principals which recognized the sovereignty of the people as the governing factor in the political and social life of civilized States." Sovereign equality (which stemmed from the law of nations and that all nations are made of equal people) had developed to where it had changed the expectations of the winners of wars. "This development has given rise to the plebiscite, under which the people may indicate en masse their wishes as to the disposition of the territory." The territory, in theory, must agree to transition under the new power but there was no guarantee of this consent in the Treaty.[156]

Article Thirty-seven outlined the transition of the territories that Germany was giving to Belgium. It attempted to do so by giving the people a choice of whether or not to stay in the

[153] Edmunds, *International Law and the Treaty of Peace*, 21.
[154] Edmunds, *International Law and the Treaty of Peace*, 21.
[155] de Vattel wrote, as evidenced in Chapter II, that the Law of Nations did allow a state to invade specifically when a group was being oppressed, thereby offering a justification for war on moral grounds.
[156] Edmunds, *International Law and the Treaty of Peace*, 15.

territory - if they did, they would have to become citizens of Belgium. If they left, they could keep their German citizenship. This system was used throughout the Treaty to deal with the changed borders. Edmunds stated that "to force a new allegiance even upon the outcast Germans, and merely temporarily, as in this case, is none the less a violation of the law of nations." Other peace-making moments, such as the Congress of Vienna, did not attempt to do this. "On the contrary, in Article VII of the Treaty of Paris of 1815, it is declared that in all centers which shall change sovereigns a period of six years shall be allowed to the inhabitants, of whatsoever condition or nationality." In the Treaty of Versailles, citizens were only allowed two years to make a decision and move.[157] In Article Fifty-three, the Treaty stated that the husband's choice of nationality covered his wife and his children, but this was usually ignored. A wife could have a different nationality from her husband.[158]

The Treaty also violated the rights of citizens of, specifically, Saar Basin. In Article Forty-five, which addressed the population in the Saar Basin area, the mines were put under control of the French government. Edmunds noted that "the mines [were] privately owned, and is in effect an act of confiscation in violation of the spirit of the law." In taking over the mines, the treaty enabled the private citizens to be robbed.[159] Article Forty-six put Saar Basin under the control of a governing commission. This disrupted the rights of German citizens in the area, Edmunds argued. One of the rights a government is supposed to afford its citizens is protection. However, there are displaced German citizens in this area and their government that they have given their allegiance to cannot protect them. The commission also undermined local authority because it did not specify how the people would play a role in the government.[160]

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[157] Edmunds, *International Law and the Treaty of Peace*, 16.
[158] Edmunds, *International Law and the Treaty of Peace*, 20.
[159] Edmunds, *International Law and the Treaty of Peace*, 17.
[160] Edmunds, *International Law and the Treaty of Peace*, 18.

Edmunds made various remarks on how the diplomats handled the affairs of various territories. On Poland, Edmunds remarked that it was partitioned away in 1705 and that this partition was confirmed by the Congress of Vienna.[161] On East Prussia, he commented that "it [did] not appear that that nay right of option [was] given to the minority."[162] Edmunds took a stronger stance on Article One hundred-fifteen, which dealt with Heligoland. He stated that there were "so many [restrictions], both negative and positive, and military and economic, have been imposed upon Germany by the present treaty that it is doubtful that Germany can be described as a fully sovereign state, at least during their continuance."[163] This is an example of the Treaty of Versailles undermining the principle of sovereign equality because they imposed so many restrictions on a nation that it could not operate under its own authority. However, it could be argued that the law of nations condoned this because it does allow for a State's sovereignty to be compromised or taken away when they have done the same to another State.[164]

Skipping ahead to Part VII, Edmunds made an interesting point about the arraignment of Emperor of Germany William II. The Emperor offended moral law and signed the legal order that directed his end and part in the war. In this way, his was guilty of the crimes that he was arraigned for. However, he was not arraigned on the charge of authoring orders that led to and continued the war. He was arraigned "'for a supreme offense against international morality and the sanctity of treaties.' There is no such offense in any penal code known to man." Combining this with the fact that "the most elemental principal of criminal jurisprudence is that no one can be punished for acts which, when committed, did not constitute a crime" makes the arraignment null. William II did offend the moral standards of the world, but these standards were not written

[161] Edmunds, *International Law and the Treaty of Peace*, 28.
[162] Edmunds, *International Law and the Treaty of Peace*, 29.
[163] Edmunds, *International Law and the Treaty of Peace*, 30.
[164] de Vattel argued this, as evidence in Chapter II.

into law. A person cannot be tried if they did not break a law. Therefore, Edmunds concluded, William II could not be tried on this charge. But Article Two hundred-twenty-seven did arraign him on this charge.[165]

Finally, it is worth noting that in Edmund's analysis of Part XII Article Three hundred-twenty-seven he made a note of a further invasion of Germany's sovereignty. In the article, the navigation of the waterways through Germany is taken away. Edmunds noted that control of the territory and trade is an essential part of a government being sovereign. He concluded that "the provisions of article three hundred-twenty-seven constitute a further invasion of German sovereignty."[166]

2.5 The League of Nations

The League of Nations (1919) was the first intergovernmental organization in history and yet it was very weak. The Covenant that the League was established by is in Part I of the Treaty of Versailles (1919), which is presented and analyzed in the previous section. First, Part I of the Treaty will be summarized, then it will be analyzed by Sterling Edmunds, who is also introduced in the previous section.

The goal of the League was to prevent war by forbidding "its members to resort to war...on pain of an immediate economic boycott by all the other members" and the League would take up a collection to assemble an army against the defiant country. Thus, it employed a two-fold attack toward any dissenting country. However, each country still within the League had the right to decide whether or not to boycott the defiant country.[167] This greatly weakened the League's effectiveness. For the League to improve, P. H. Winfield suggested it hold all

[165] Edmunds, *International Law and the Treaty of Peace*, 38.
[166] Edmunds, *International Law and the Treaty of Peace*, 50.
[167] Winfield, *The Foundations and Future of International Law*, 43.

countries to its membership in the League, that it forces every member to employ economic sanctions when instructed to, and that it should strengthen its military provision.[168] This of course created a supra-national entity that could violate state's sovereignty in the interests of defending another's.

Part I of the Treaty of Versailles defined and developed the structure and purpose of the League of Nations. Article One defined the requirements for and how a country joined the League and how they left. A country was added if two-thirds of the Assembly voted in favor. [169] They were to be a free and independent state in order to join. If a country wanted to leave, they had to provide two years notice.[170]

Article Two presented the structure of the League - there was to be an Assembly, a Council, and Secretariat. Articles Three through Six went into more detail about the structure. The Assembly was to have a representative from each country. Each representative had one vote and could have a maximum of three representatives. The Council had "Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League."[171] Each Member provided one representative that had one vote.[172] The four representatives are added by the Assembly and the Council could add representatives to the Assembly.[173] The Council was allowed to set its own agenda. Except for when it was otherwise specified, both the Council and the Assembly were required to have a unanimous vote to pass anything. The Secretariat Office appointments was permanent. This office consisted of a Secretary General who would sit at the head of the League and any other needed secretaries. The

[168] Winfield, *The Foundations and Future of International Law*, 108-109.
[169] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 10.
[170] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 11.
[171] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 11.
[172] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 12.
[173] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 11.

Secretary General was appointed by the Council and approved by the Assembly. His pay was shouldered by the Members of the League.[174]

Article Seven stated that the base of the League's operations was in Geneva, Switzerland but that this location could be changed. It also stated that "all positions...shall be open equally to men and women." The League stated that its goal was to maintain peace through disarmament in Article Eight. They intended to revisit this goal every ten years.[175] Article Nine established a permeant commission to advise the League it on the goals outlined in Article Eight.

In Article Ten, the writers invoke sovereign equality. Members "undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." This article required that all of the members uphold the integrity and equality of the other members but necessarily those outside the League.[176] His essentially secured sovereign equality within the League. However, according to Article Eleven all war was a concern of the League. Any Member could bring up any matter that was related to international relations, a right that was protected under Article Eleven. [177]

Article Twelve described how the League was to deal with internal disagreements. If Members disagreed with each other, to point that there was the potential for war, then they had to submit the terms of the disagreement to the Council. Once the Council made a decision, the Members were not allowed to fight about the issue for three months after the decision.[178] Article Thirteen requires Members to settle disagreements by arbitration, accept the Council's decision, and to "not resort to war." If Members do go to war, then the Council will take steps.[179] The

[174] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 12.
[175] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 13.
[176] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 13.
[177] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 14.
[178] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 14.
[179] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 15.

Permanent Court of Justice was established in Article Fourteen, which should have helped with mediating between Members. Article Fifteen stated that if a matter was not submitted to arbitration, then the Council was to try and settle matter. If they failed, the Assembly could take over and make the decision or they could publish a report with their findings.[180] If any Member declared war against anyone it was considered a declaration against the entire League under Article Sixteen. Members were called on to enact financial and economic punishments that the League would collectively employ against rebellious States. The Assembly had the power to remove a State from the League, if the vote to do so was unanimous, under the same article.[181]

The League's method for navigating external conflict was outlined in Article Seventeen. If an external conflict were to arise between a Member and a Nonmember, then the Nonmember would be asked to join the League. If the Nonmember accepted, then the matter could be handled as an internal conflict. If not, then the League would employ the same collective punishment that was outlined in Article Sixteen.[182]

The writers of the Covenant wanted to make the League a priority to countries. They did this by regulating the agreements that Members entered into. Article Eighteen demanded that the Members register any and all treaties they entered into. The treaty was not valid until it was registered with the League. The Assembly could not stop a Member from entering into a treaty "whose continuance might endanger the peace of the world," but they could advise against it under Article Nineteen.[183] Article Twenty does just this - it stated that Members should have prioritized the Covenant and not engage in any agreements that would compromise its commitment to the League, peace, or that would be inconsistent with the Covenant. The

[180] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 15-16.
[181] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 17.
[182] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 18.
[183] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 18

Covenant did set limits on the power of the League. Article Twenty-one upholds international understands and gave the Monroe Doctrine as an example. [184] Article Twenty-four dictated that all the previous treaties that Members entered into the League with were to be reviewed by them.[185]

Article Twenty-two covered how to interact with States that were colonies and are unstable. These States were called "Mandatories" and the League would issue mandates and established commission to assist them in becoming more stable. [186]

Article Twenty-three went into more depth about the League's goals. They were trying to ensure fair working conditions, "just treatment of the native inhabitants of" colonies, reduce trafficking (human, drug, and arms), free international trade, and reduction of international disease.[187] In support of these goals, all of the Members were required to support the Red Cross under Article 25.[188]

Finally, the Covenant ended - excluding the Annex for this part - with Article Twenty-six. This last article outlined the amendment process for the covenant. The amendment must have been ratified by the majority. If a State did not ratify an amendment but the majority did the dissenting State would cease to be a Member.[189]

Edmunds essentially panned the League of Nations covenant when he analyzed Part I of the Treaty of Versailles. He argued that the League was a "reactionary institution rather than a progressive one."[190] Not only this, but the League was also created without the influence of international law. "There is not a single reference to international law in the whole covenant that

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[184] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 19.
[185] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 21.
[186] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 19-20.
[187] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 21.
[188] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 22.
[189] *The Treaty of Versailles*, *The Treaties of Peace, 1919-1923*, 22.
[190] Edmunds, *International Law and the Treaty of Peace*, 3.

points to any definite plan whatever for the progressive improvement and extension of that law."[191] This is critical because the League was focused on international cooperation. The lack of reference to something that should have been involved in the foundation could have contributed to why this organization ultimately failed.

The League of Nations was not as inclusive as it should have been, as a world organization. Only forty-five countries were invited when there were an estimated seventy-four countries that qualified in Europe alone. An analysis by a Cambridge professor in 1910[192] suggested that there were twenty-one states in the Americas, one state in Asia, and one state in Africa that met the requirements for joining the League which adds up to a total of ninety-seven qualifying states. Less than half were invited to join.

Edmunds claimed that the League's structure was hypocritical and overbearing. It was to such an extent that he claimed it "confound[ed] all previously accepted principles with respect to international personality and sovereignty." The article stated that "any fully self-governing state, dominion, or colony may become a member" as long as it was approved by a two-thirds majority. Edmunds pointed out that if, by this definition, the writers meant that these states were free and independent then, for example, the British Empire should have been broken up. A true colony would not have been a part of international negotiations because they would have been considered a territory of the colonizer. Therefore, any empire would not have been able to continue as they had been. Further, "no genuine league of nations can be founded upon such basic inequalities."[193] Also in Article One was the requirement that members of the League give a two-year notice of their intent to leave the organization. Edmunds argued that this instruction

[191] Edmunds, *International Law and the Treaty of Peace*, 3.
[192] Edmunds, *International Law and the Treaty of Peace*, 5. The professor is only named in this source as Oppenheim. Note that the League of Nations was formed in 1919 with the ratification of the Treaty of Versailles.
[193] Edmunds, *International Law and the Treaty of Peace*, 5.

reduced the countries to "wards" of the organization, which implied the writers were essentially treating other countries like children.[194]

Another flaw in the setup of the League is that there was no set time or organization for the Assembly meetings. The only instruction is that they could be called by the U. S. President.[195] The Council, therefore, could potentially take over operation of the League. The structure of the Council certainly enables this and "equality disappears at this point, the five constituting themselves an indefeasible majority." This is unallowable and inconsistent with the general purpose of the League. Edmunds argued that "every attempt at organizing a league of nations must start from and keep intact the independence and equality of all civilized states." Sovereign equality must play a large role in an international organization that is committed to cooperation. The structure of the Council did not uphold this.

Edmund's analysis of Article Ten revealed another flaw in the Covenant. The article restated one of the acceptable circumstances for compromising another State's sovereignty - when the State is being aggressive. However, as Edmunds pointed out, there were other lawful, accepted situations where it would have been acceptable to invade another State. These were self-defense, if a treaty allowed and arbitration failed, "on the grounds of humanity," and if there was a group being oppressed. The Covenant did not address or recognize these other instances that were allowed under international law.[196]

While the Covenant discussed what to do "under threat of war" in Article Eleven, there is no definition given for this term. [197] Therefore, this description could be manipulated to mean whatever a Member needed it to, and the League could have gone to war over anything that the

[194] Edmunds, *International Law and the Treaty of Peace*, 6.
[195] The United States did not ratify this treaty but they were granted this power in it.
[196] Edmunds, *International Law and the Treaty of Peace*, 8.
[197] Edmunds, *International Law and the Treaty of Peace*, 9.

Covenant did not specify.[198] This term is especially powerful because later in the Covenant its stated that war anywhere is of concern to the League.

Similarly, any State's action in its domestic sphere could have given rise to an international incident. Article Fifteen required that any issue that could give rise to a dispute must be submitted to the Council. This gave the League a lot of power over domestic or individual state affairs as well as international affairs.[199]

The method of settling disputes gave the League too much power over domestic affairs, according to Edmunds. Article Seventeen, which outlined this process, gave the League the ability to mediate any dispute that did - or could be argued to - affect international relations, whether or not the States agreed to such mediation. "It necessarily involve[d] a denial of the heretofore accepted principals of the equality and independence of States."[200] By giving itself the authority to revoke the decision of another state, the League was defying sovereign equality.

Member States were required to detangle themselves from any treaties that were inconsistent with the goals and values of the League. Edmunds stated that "it is clear that different standards will be applied as between the principal Allied and Associated Powers, on the one hand, and the small states on the other." He expected there to be a continued inequality of the application of the law between the Allied Powers and the smaller states in the League.[201]

In Article Twenty-two it was stated that the Council would keep the States that inherited the German colonies in check. Edmunds pointed out that all of the Powers that were on the

[198] Edmunds, *International Law and the Treaty of Peace*, 10.
[199] Edmunds, *International Law and the Treaty of Peace*, 10.
[200] Edmunds, *International Law and the Treaty of Peace*, 11.
[201] Edmunds, *International Law and the Treaty of Peace*, 11.

Council, except for Belgium, were the States that inherited the colonies. Therefore, they would be charged with keeping themselves in check, which had huge potential to turn corrupt.[202]

Finally, Edmunds commented on the amendment process. He claimed that "the structure contemplate[d] not an association of equals but the subordination of the many to the authority of the few. The overruling is not a diplomatic assembly but a small group in which unequal representation exist[ed]" that ruled over the larger body of States. The way which a State was made to exit if they did not ratify an amendment was absolute and powerful.[203]

The League of Nations ultimately failed and was dissolved with World War II as it had failed to accomplish its goal of creating and maintaining world peace. It was a flawed system but also one of the first attempts at an international peace organization. It was bound to have some flaws, but its problems began from the outset with its public script of upholding each Member's sovereign equality but in its actual structure it took away from the smaller states. The League, in being an organization that supersedes any individual state's authority, seemed to inherently take away from the participating state's sovereign equality, even as its purpose was to protect it. The League does both – it takes detracts from and secures a state's sovereign equality in the same way that a government takes away from the rights of an individual and protects those rights at the same time.

Despite Edmund's harsh opinion of the League, it was an important development in international law. While organizations like it had existed before, they were limited in reach and authority.[204] The League truly represented the first attempt at an organization to codify and enforce international law – and have the authority to do so.

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[202] Edmunds, *International Law and the Treaty of Peace*, 13.
[203] Edmunds, *International Law and the Treaty of Peace*, 13.
[204] Arend, "The evolution of international law." *The Cambridge World History*, 293.

2.6 The Charter of the United Nations

The United Nations Charter (1945) was a direct response to World War II and is important to consider in the context of the development of sovereign equality. Sovereign equality and the United Nations have a complicated, convoluted relationship similar to the League of Nation's relationship with sovereign equality.

Gerry Simpson's article published in 2000 entitled "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter" claimed to show how "institution-building in the legal order [was] regarded as an attempt at reconciliation between" two core values - hegemony and sovereign equality.[205] He began by defining sovereign equality as: "the notion that states are formally equal or are entitled to some sort of equality under or before or in creation of the law." Simpson's goal was to examine this concept's relationship with the concept of the "Great Powers." By great powers, Simpson meant states that "possess immense economic, military, and political resources." However, he claims further that these. resources are not all it took to be a great power. Simpson asserts that "what makes them Great Powers, though, is the legal recognition of their states as superior powers by others in the society of states" and by themselves.[206] Their power being recognized is an important indicator of the hegemony they set up. They are the opposite of outlaw states because they have special privileges while outlaw states "are denied standard rights."[207] These concepts of great powers and outlaw states conflict with the concept of all states being equal. This is what Simpson explored in his article.

[205] Gerry Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," *Australian Year Book of International Law* 21, (2000): 135.
[206] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 133.
[207] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 134.

According to Simpson, there were three sets of powers that came together to ratify the United Nations charter: the great powers, the small and middle powers, and the enemy states.[208] They all had different interests and goals. The great powers entered the discussion with the "idea of an executive-led, collective security regime." This four-policeman model "dominated the thinking of the United States of America, the United Kingdom, and the Soviet Union delegates in particular." These three states and China were to be the four policemen. The small and middle-sized states came in worrying about the great power's authority in the Charter. While they did agree that these powers had a special role in the international system, they feared their role was exaggerated in the talks that had led up to the drafting of the Charter. The enemy states were countries that were considered "outsiders." They were initially not intended to have a role in the organization or to be in it. Simpson noted that this idea of "enemy states" was, therefore, ingrained in the development of the organization and its structure, just as the ideas that the other sets of powers came in with.[209]

The great powers pushed a hegemony that they had created before coming to discuss with the other nations. These powers attempted to obscure this intent by using the term "collective security."[210] This did not surprise many negotiators, if any. In fact, Simpson claims, it seemed inevitable to most. The great powers justified their actions a few ways, mainly that they had a special responsibility because they were so powerful. With great power comes great responsibility.[211] Another justification was that the seats on the Security Council - and the majority of the power within the organization - were given to these select states as a reward for

[208] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 135-136.
[209] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 136.
[210] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 137.
[211] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 138.

sacrificing more than the other states. [212] There was a third justification as well that continues into today. Simpson stated that: "Ironically, one of the primary justifications for hegemony was, and continues to be, linked to the idea that 'substantial' sovereign equality could best be preserved by resort to legal hegemony." Essentially, the smaller states needed bodyguards to ensure their sovereign equality against threats to it. This hegemony is remarkably similar to the balance of power doctrine and the Concert of Europe. Both of these latter concepts involved more powerful states dictating the affairs of the continent. All of the justifications for hegemony in the twentieth century cumulated "in a process that was, initially, openly elitist" and enforced certain state's power. While the United Nations was supposed to be about equality between nations, as it was stated in Article 2.7 of the Charter:

> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.[213]

However, even into the signing of the charter - where the four previously mentioned countries signed first - it was openly not equal in its conception and design.[214] Simpson concluded by remarking on this combination of equality and hegemony:

> A norm of sovereign equality, then, created a level of artificial parity between the great powers themselves in the Security Council just as legalised hegemony ordered relations between the core and peripheral states. This combination of parity and hegemony became a mark of the new international legal order.[215]

Between the powers, there was equality. Between the powers and the other states, there was hegemony. But the justifications all along the way invoked equality between states and before

[212] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 138-139.
[213] The Charter of the United Nations, article 2.7.
[214] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 139.
[215] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 142.

international law. The combination of these two contradictory principles in this unique manner is the hallmark of our modern international system and a continuation from the Concert of Europe and the League of Nations.

Even as hegemony was being talked about and understood as a reality of the organization, sovereign equality was also invoked as a foundational principle of the United Nations. The previously quoted article is the definition of sovereign equality - there is no interference in the internal affairs of any of the countries, but they are still required to submit to international law.

Simpson sought to explain and comment on this contradiction. He claimed that sovereign equality was the concept influencing the great powers to try to "govern" the smaller states.[216] The smaller states, as they were less powerful, needed their sovereignty to be protect by the great powers. The smaller states were very concerned about the great powers trying to "protect" them and feared the "four-policemen" model. Simpson suggested that since the smaller states expressed concerns about the potential for interference from the great powers, the great powers had to be careful in how they advocated for hegemony.[217] As part of this effort, the United States State Department replaced 'equality of nations' with 'sovereign equality' "on the basis that sovereign equality was a principle more consistent with the dominance of the great power," or hegemony.[218] In other words, the State Department, from Simpson's point of view, was looking to disguise the hegemonic nature of the new system by introducing this new term.

All of the powers were able to agree on three things - that sovereign equality was a cornerstone of the new system, that departures form the principle would be needed to install and

[216] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 143.
[217] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 144.
[218] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 145.

maintain the new security regime and make it effective,[219] and, finally, that the justification for these departures stemmed from legal principles or because it was deemed necessary.[220] "There was a recognition that special privileges were at variance with the principle of sovereign equality 'from a democratic, legal, and theoretical point of view' but that these privileges were politically necessary."[221] The hegemonic structure was, therefore, was part of sovereign equality, according to Simpson's interpretation of the Charter.

One part of the United Nations that was, perhaps, truly equal is the General Assembly. Everyone is represented and there are no special powers for the great powers. Simpson noted that while many interpret this body as weak and irrelevant, he thinks that this view underestimated "both its constitutional power and its symbolic impact."[222] It wields a fair amount of power - all of the councils, including the Security Council, report to it. The Assembly can order studies, recommend action, "promote cooperation," was given power over the budget, and was given power over appointments to the councils. The Assembly succeeded in preserving sovereign equality in a few ways.[223] Every country was allowed one representative and every representative was allowed one vote.[224]

The focus of the compromise between sovereign equality and hegemony was the Security Council and its powers. "It was assumed that the principle of sovereign equality would appear in a prominent place in the Charter." The smaller states tried to accomplish this by diluting the hegemony. There were three proposed ways to dilute the hegemony - through the power of the Security Council's veto, the structure of the Security Council, and by subjecting the Security

[219] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 145.
[220] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 146.
[221] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 151-152.
[222] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 154.
[223] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 155.
[224] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 156.

Council to some other entity or person. The small states attempted to make the veto power of the Security Council less absolute[225] but ultimately failed.[226] The second method, adding more members to the Security Council on a non-permanent basis with the great powers having permanent seats[227] - also failed. Membership in the Security Council has not changed since 1945.[228] The last change that was proposed did ultimately succeed. The smaller states were able to put the Security Council under the jurisdiction of the General Assembly. The Assembly was given the "right to be kept abreast of all questions being dealt with by the Security Council, but virtually every other modification was rejected."[229] While the smaller states did manage to put the Security Council under the General Assembly, chapter VII allowed the Council to define its own powers and act independently. Even with these efforts to dilute the hegemony, it was still "entrenched in the resultant institution."[230]

The Charter acknowledged sovereign equality in several ways and places. Simpson noted Articles One,[231] Two, Fifty-five[232], and Seventy-eight.[233] "There articles clearly do not prelude organisational hierarchy, but they do confirm that the UN continues to be based on the same idea of state sovereignty and an insistence that 'UN organs must also treat states equally."[234] The smaller states were essentially faced with the choice of a flawed organization or no organization

[225] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 147.
[226] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 148.
[227] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 149.
[228] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 150.
[229] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 151.
[230] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 152.
[231] "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."
[232] "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."
[233] "The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality."
[234] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 156.

at all, since the great powers refused to compromise on their power. This was essentially a pragmatic acceptance of rule of the powerful states that was in place long before the United Nations. The smaller states chose to go ahead with the Charter.[235] "The Charter creates an international order in which the sovereign equality of all states was adapted to the prerogatives of the great powers. It represents neither the vindication of sovereign equality...nor its passing." Simpson concluded by making a broader claim about sovereign equality being understood as a stand-alone principle: "Instead, sovereign equality needs to be understood as a raft of principles, some of which survive the creation of semi-centralized constitutional orders, others of which are severely compromised as a consequence." The concept played a larger part in the understanding and development of the international system, but it alone does not contribute or rule the international system. This being said, the Charter still "enacts a weakened form of legal equality alongside a mildly constrained constitutional hegemony." [236] While every country is willing to acknowledge equality between them, this is often not shown in practice. Even as this was seen as an inevitability, it was still fought against. Equality between nations is still a developing concept that is struggling to exist without hegemony and inequality.

It is important to note that while "all states, whether great or small, [were] equal so far as legal rights go...politically, they [were] not equal and this is recognized by international law" when there is an alliance of influential powers - such as the "Great Powers" in Europe in the later part of the 1900s. This group and the countries that were a part of it would have more power than a single country.[237] However, this "[laid] at Westphalia's feet the responsibility for having sanctioned precisely the proto-totalitarian authoritarianism associated with the state's right to

[235] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 157.
[236] Simpson, "The Great Powers, Sovereign Equality, and the Making of the United Nations Charter," 158.
[237] Winfield, *The Foundations and Future of International Law*, 38-39.

both preemptive aggression against potential foes from the outside and to normative 'domestic jurisdiction' within as well."[238] In short, in establishing this concept of sovereign equality, the Peace of Westphalia also allowed for a powerful "protector" group to emerge that would take away the equality of smaller states in order to better protect their equal status. Because, while all states were equal before the law, they were not all equal in power.

[238] Jane O. Newman, *Performances of Peace: Utrecht 1713* (Leiden: Brill, 2015), 255.

3. INTERPRETATIONS

3.1 In Favor of the Importance Placed on the Peace of Westphalia

Whether or not the Peace of Westphalia established the concept of sovereign equality in European international relations is still debated. Leo Gross is usually credited as being the most influential scholar to propound the thesis in favor of the Peace of Westphalia in his 1948 article, "The Peace of Westphalia, 1648-1948." Indeed, his article partially inspired this paper because he forged a pathway to explore multiple treaties to see if they embraced sovereign equality.[239]

Gross considered the Peace of Westphalia to be the first attempt at international unity "on the basis of states exercising untrammeled sovereignty over certain territories and subordinated to no earthly authority."[240] By this, he meant that the Pope and the pervasive acceptance of Catholicism definitively no longer ruled and unified the international system. The Peace, he argued, had a "continued influence" throughout history on international organization.[241] It was influential because it established it established religious toleration when Catholicism had previously served as the universal religion in Europe. It protected minority religions and, in doing so, allowed for all countries in Europe to become equal. Gross argued that the Peace allowed for an international system based on equality between nations:

> It is this conception of an international society embracing, on a footing of equality, the entire human race irrespective of religion and form of government which is usually said to have triumphed in the seventeenth century over the medieval conception of a more restricted Christian society organized hierarchically, that is, on the basis on inequality.[242]

[239] Gross invoked the several moments that were not covered in this paper as well as some that were. Of the ones that were examined in this paper, he called on the Congress of Vienna, the Treaty of Versailles, the League of Nations, and mentioned the United Nations as it was the inspiration for the article.
[240] Gross, "The Peace of Westphalia, 1648-1948," 20.
[241] Gross, "The Peace of Westphalia, 1648-1948," 21.
[242] Gross, "The Peace of Westphalia, 1648-1948," 33.

Gross did acknowledge that the Peace of Westphalia did not do this perfectly. The Peace of Westphalia did uphold the Peace of Augsburg and the rule *cujus regio ejus religio*. However, Gross pointed out things that the Peace did well - specifically that it protected religious worship and divided the German Diet by religion (half Catholic, half Protestant). "The principle of religious equality was placed as part of the peace under an international guarantee. The Peace of Westphalia thereby established a precedent of far-reaching importance."[243] Equality between countries, therefore, was established with the Peace of Westphalia, according to Gross.

Another reason that the Peace of Westphalia was so influential was the guarantees it promised. Gross noted that "both treaties declare that the peace concluded shall remain in force and that all parties" were obliged to uphold it against any attack, regardless of their religion. Of course, guarantees in treaties were not a new concept and the guarantees in the Peace were not much different from previous ones. But the resulting structure of the Holy Roman Empire abolished all previous influence over other European states through dynastic politics. The Peace ensured continued political decentralization in Central Europe by confirming the sovereignty within the Empire of individual states, which then, with their newly won authority, established themselves as absolutist states.[244] The combination of the nature of the clauses and the guarantee and agreement behind them is what made the Peace Europe's first "international constitution."[245]

The Peace went further than just guaranteeing the clauses, it provided a roadmap for how countries were to deal with disputes. The Peace offered a dispute resolution mechanism that created pathways to either a peaceful accord or a justification for way if a solution proved impossible. This, Gross argued, was unique to the Peace of Westphalia and new to peace keeping

[243] Gross, "The Peace of Westphalia, 1648-1948," 21.
[244] Medick and Marschke, *Experiencing the Thirty Years War, A Brief History with Documents*, 171.
[245] Gross, "The Peace of Westphalia, 1648-1948," 24.

and making. This provision was flawed although it did serve as a Model for subsequent efforts to create a platform for the resolution of international disputes.[246] These differences from the previous treaties is what distinguished the Peace of Westphalia as important.

But Gross also added that it was not just the actual clauses of the Peace that made it so influential for the future. How the Peace was thought of later and its implications contributed greatly to its importance. HE claimed that "the Peace of Westphalia was the starting point for the development of modern international law." The Peace, along with the subsequent work of Hugo Grotius developed the international system as we know it. Gross went so far to say:

> It can hardly be denied that the Peace of Westphalia marked an epoch in the evolution of international law. It undoubtedly promoted the laicization of international law by divorcing it from any particular religious background, and the extension of its scope so as to include, on a footing of equality, republican and monarchial states.[247]

Gross claimed that the Peace did mark a change in treaties and how diplomats acted during negotiations. By secularizing international law, the Peace put all the states on the same footing. Regardless of the validity, Gross is compelling when he stated that "the Peace of Westphalia, for better or worse, marks the end of an epoch and the opening of another."[248] Whether this change was as decisive as Gross suggested is the question that has propelled this paper.

The Peace of Westphalia challenged the Pope's authority, which was not new. The Pope was being challenged before the Peace. The Pope condemned the Peace with the Bull *Zel Domus* in November of 1648, but it did not change anything. The Peace was said to be "a public act of disregard of the international authority of the Papacy."[249] Gross claimed that, at this time, "the idea of an authority or organization above the sovereign states is no longer. What takes its place

[246] Gross, "The Peace of Westphalia, 1648-1948," 25.
[247] Gross, "The Peace of Westphalia, 1648-1948," 26.
[248] Gross, "The Peace of Westphalia, 1648-1948," 28.
[249] Gross, "The Peace of Westphalia, 1648-1948," 28.

is the notion that all states form" a single states-system.[250] This did not prove to be true because international organizations have formed throughout European history, as evidenced in chapter two of this paper. There are at least two formal organizations that have been over sovereign states - the League of Nations and the United Nations. While these organizations are secular and not religious like the Pope and the Catholic church, it is worth noting that at this point, sovereign equality seems to dictate that there be nothing else influencing the state.

3.2 Criticisms of the Importance Placed on the Peace of Westphalia

There have been several critiques of Gross's claim, especially in the early 2000s. Peter Stirk, a Senior Lecturer on International Affairs at Durham University, published one such critique in 2012. He focused on Gross's claims about the contribution of the Peace of Westphalia to the development of sovereign equality.[251] Stirk reexamined how sovereign equality came to be associated with the Peace and the purpose behind the link. He concluded that the connection between the Peace and sovereign equality "is not only bad history but is also a hinderance to the contemporary study of International Relations."[252]

Stirk began by looking at the society of the seventeenth century, which he said was generally hierarchal. This argument led to the conclusion that the Peace was perceived in the seventeenth century as "restorative not innovative." “In diplomacy that meant protracted and bitter disputes over precedence." This still could have led to a cry for equality from the smaller states, either by making themselves equal amongst each other or with the more powerful states. Stirk argued that "this was not, however, an equality based upon a general principle but a clamour by each for enhancement of its own status, preferably at the expense of others, in an

[250] Gross, "The Peace of Westphalia, 1648-1948," 29.
[251] Peter M. R. Stirk, "The Westphalian model and sovereign equality," *Review of International Studies* 38, no. 3 (July 2012): 642.
[252] Stirk, "The Westphalian model and sovereign equality," 644.

international hierarchy." This cry for equality, then, was not for the sake of morality or principle, it was for power.[253] Stirk argued, based on this contextual analysis, that the Peace merely reaffirmed the status quo of European relations.

Stirk further argued that Gross's claim that, by allowing states to negotiate and agree to treaties with outside states, the Peace recognized sovereignty and equality of states is false. There are two reasons that Stirk presented for this. First, this was not a new right being granted but an old one that was being reaffirmed. Second, this claim "presumes a linkage between a right to conclude treaties, the state and sovereignty which was far from established in the middle of the sixteenth century." Stirk argued that scholars have associated the right of a state to negotiate with external states with sovereignty. This link between being able to negotiate with outside states on equal footing was not new, according to Stirk, nor was it understood at the time that there was a link between equality and the right to sign a treaty with another nation. In the same vein, sovereignty was not understood in the same manner as it is today.[254] Stirk concluded that "there was little trace of sovereign equality in the peace of Westphalia or indeed of a modern conception of sovereignty at all." They did not invoke sovereign equality in any sense.[255]

According to Stirk, even later, in the eighteenth century, equality was still not an established concept but it was gaining ground. There was still an effort to gain hierarchal power in Europe and society was still predominantly hierarchal.[256] The focus was still on accumulating glory and honor. There was more of an effort to remove "passions" from government to provide "a more stable guide for rulers and states." The push for equality between states, according to

[253] Stirk, "The Westphalian model and sovereign equality," 644.
[254] Stirk, "The Westphalian model and sovereign equality," 645.
[255] Stirk, "The Westphalian model and sovereign equality," 646.
[256] Stirk, "The Westphalian model and sovereign equality," 646-647.

Stirk, came from Emmerich de Vattel[257] who argued that because all men are equal and all nations are made of men, all nations must, therefore, be equal. However, Stirk pointed out that Vattel was challenging, not confirming, diplomatic practice during his time. Stirk claimed that "Vattel knew this...Yet this did not affect the force of his argument." Vattel defied the system that he was under in his work.

Stirk argued for another reason that there was not a link between the Peace of Westphalia and sovereign equality. He claimed that scholars in the eighteenth century saw the Holy Roman Empire differently than scholars today. "Most eighteenth-century commentators did not perceive a conglomeration of independent and equal states under the shadow of the empty shell of a former empire as later interpretations would see it." Twentieth century scholars claimed that, after 1648, the Empire was no longer a state because the territories would have qualified as independent states. Stirk opposed this view because it did not align with how eighteenth-century scholars saw the Holy Roman Empire. [258]

Stirk pointed out that, historically, the Peace of Westphalia was not always considered to be the treaty that established sovereign equality in European international relations. For writers in the eighteenth century, the Treaty of Utrecht was "the watershed treaty in establishing the new order of state-integrity and a balance of power." [259] The Peace of Westphalia was aimed at resolving tensions, not instituting a new world order. Stirk then concluded that "almost none of the elements of the image of the peace of Westphalia as an epoch-making transition to a world of sovereign equality" were present in the eighteenth century.

[257] Stirk, "The Westphalian model and sovereign equality," 647.
[258] Stirk, "The Westphalian model and sovereign equality," 648.
[259] Stirk, "The Westphalian model and sovereign equality," 650. All of the information for this paragraph comes from this source and page.

What was needed to show that the Peace of Westphalia did establish sovereign equality in Europe was Stirk asked. Stirk listed out what he believed was needed to prove that the Peace was the starting point of sovereign equality:

> Greater doctrinal insistence on equality that could find firmer footing in diplomatic practice; considerable slackening in the dominance of national law arguments and the emergence of a historical sociology of law; greater consensus about the universality of a clear concept of sovereignty; the disappearance or marginalisation of structures that would be seen as manifestly incompatible with the image; some sense of a unified modern epoch in international relations.[260]

Stirk concluded that these requirements did not get met until the nineteenth century, when the Peace of Westphalia began to be strongly associated with sovereign equality. But it was associated unevenly and with resistance.

Stirk claimed that analysis of nineteenth century developments had to begin with the Congress of Vienna because it shaped international relations for the nineteenth century. He concluded that the Congress "showed little respect, either in the conduct of the Congress or in its outcome for principled equality of states. Stirk agreed with Gerry Simpson, who aptly summarized relations among the Congress states as a form of legalized hierarchy." This did not mean that equality was not invoked during the Congress at all. But when it was, Stirk claimed that it was used as a ploy to gain the upper hand in political situations.[261] The concept carried weight in the negotiations because the response from other states was to submit to it. The Congress, in a general sense, invoked a weakened, qualified sense of sovereignty so that it would be compatible with the hierarchy that was already heavily integrated. A stronger concept of sovereign equality did gain ground during this time. But it still relied on Vattel's earlier arguments about the law of nations. "Indeed, Vattel's argument was so influential that one late

[260] Stirk, "The Westphalian model and sovereign equality," 650.
[261] Stirk, "The Westphalian model and sovereign equality," 651.

nineteenth century author" repeated it and did not even bother to mention Vattel's name. Critics called sovereign equality baseless yet prevalent.[262]

Stirk also explained how the Peace came to occupy this role in international relations history. During the nineteenth century, Stirk argued that the natural evolution of European law was their current international law system. Since the principle of equality was also argued to be part of the European law, it made sense to look for its origin, for which the Peace of Westphalia was a candidate. Stirk claimed that the combination of the lessening of "overt doctrines of natural law," diplomatic insistence on the principle, and the simplification of the world map most likely explains the link between the Peace and sovereign equality in the nineteenth century.[263] The conclusions on this link varied but were all in agreement on the principal claim. It seemed, to Stirk, that despite the thorough recognition of sovereign equality, the international order tended back toward a hierarchal structure. Instead, it was under a committee instead of a Pope or Emperor.[264] The distinction between "equal protection of the law" and an "equal capacity for rights" became a source of disagreement. There was a big difference between the two - in the latter, the subjects are to "have exactly the same rights and not merely the idea that each legal subject should have such rights as it happened to have protected." The equal capacity for rights is a concept that is seem as more aspirational whereas the equal protection of the law is seen as the reality.[265]

In the mid to late twentieth century the debate centered around the United Nations Charter. There was a large clash between sovereign equality and hegemony, as explored early in

[262] Stirk, "The Westphalian model and sovereign equality," 652.
[263] Stirk, "The Westphalian model and sovereign equality," 654.
[264] Stirk, "The Westphalian model and sovereign equality," 655.
[265] Stirk, "The Westphalian model and sovereign equality," 656.

this paper.[266] Stirk reaffirmed that the struggle came down to there being an imperfect organization or none at all. Even with this struggle between hegemony and equality, Stirk noted that: "Yet the doctrine of equality, the doctrine of Vattel and the equality of dwarf and the giant, increasingly, triumphed in the sense that the normative presumption in favor equality largely discredited principled arguments for hierarchy." During these debates, Leo Gross published his influential article "The Peace of Westphalia, 1648-1948."[267] Stirk cited Gross's article a few times throughout his article but did not directly respond to any of his specific claims.

[266] Stirk, "The Westphalian model and sovereign equality," 657.
[267] Stirk, "The Westphalian model and sovereign equality," 658.

CONCLUSION

Epilogue

Productive and unsuccessful compromises can both be found in almost every treaty. One of the unsuccessful actions of the Peace of Westphalia was "that it established a number of Princes and states in an anomalous position of quasi-independence, most of them so weak that they could not resist the encroachments of France or Sweden" in its attempt to give the princes more rights over their territory.[268] This made them easily susceptible to external influences.

Another unsuccessful compromise was the Peace gave France and Sweden the right to interfere in with the internal affairs of the Holy Roman Empire because they were the guarantors of the treaties.[269] In Article V Section Forty-one, the Queen of Sweden, specifically, was allowed to "intervene amicably and intercede humbly" on behalf of the Protestants in the Empire. [270] While this alone does not necessarily infringe on the Empire's sovereignty, a clause similar to this was confirmed in the Congress of Vienna which had allowed for the partitioning away of Poland. Clauses like this contain the potential for the destruction of sovereignty. The Queen of Sweden could have used this clause to invade the Holy Roman Empire and justified it under her duties as the guarantor of the Peace of Westphalia.

The unsuccessful parts of the Peace of Westphalia should not overshadow what it did achieve. The Peace did manage to facilitate peace among states divided by the religious schism that had sprung in 1517. It did this by ensuring that there were an equal number of Protestants and Catholics who assembled at the Diet and allowed matters that related only to Protestants be

[268] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 19.
[269] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 19.
[270] *The Peace of Westphalia (October 24, 1648)*, *The Essential Thirty Years War*, 92.

addressed only by them, and the same with the Catholic members. It was the final blow to the Pope's influence in Europe and facilitated the emergence of a system of sovereign equality.

In his article, Stirk failed to talk about the role of religion in the Peace of Westphalia. But religion played a large role in politics of the era of the Protestant Reformation and in the causes of the Thirty Years War. The argument for sovereign equality beginning with the Peace uses the fact that the Peace is focused on remedying the fractures that were cause by religion. It removed religion as the binding force within a country. Redefining the role of religion in government, at that time and in Europe, was a large part of what the Peace accomplished. For Stirk to not make it a part of his argument is a large misstep on his part.

There was a disconnect between Gross and Stirk's arguments. Stirk was focused on what happened at after the Peace, while Gross was looking at what happened before the Peace. They each came away with different conclusions, probably due to their differences in scope. Also, Stirk claimed that the Peace was seen and used in 1948 as a symbol of the system of nation states (this was in Europe as well, not just America with Gross).[271] However, also in 1948, the Peace was seen by some scholars as allowing other European powers to dominate Germany and stunt its growth. This would have been the opposite of sovereign equality.[272] These two views existed at the same time, but the former was much more proliferate.

Stirk had a valid point when he said that scholars need to be careful about imposing our current understanding on sovereignty onto the seventeenth century. However, he failed to address the thought that sovereign equality, of course, would not have sprung forth perfectly formed and executed right after Westphalia. Gross may have implied this in his article, which every scholar should have a problem with. The history of sovereign equality showed a

[271] Newman, *Performances of Peace: Utrecht*, 261.
[272] Newman, *Performances of Peace: Utrecht*, 264.

progression towards its full implementation between nations, culminating thus far in the United Nations Charter. It was not invoked perfectly, and still is not, but there was definitely a change after the Peace of Westphalia. That cannot be denied.

The development and implementation of sovereign equality was uneven and marred, but it is unreasonable to expect it to be anything else. Very few concepts develop uniformly across history and sovereign equality is no exception. The Treaty of Utrecht began because external states intervened in another country's internal affairs. By trying to change who inherited the throne of Spain, these countries were diminishing, even taking away, the Spanish government's sovereignty and equality. They felt that they were justified in intervening because they were doing so in order to maintain the balance of power in Europe. In the end, the Spanish government did get the person that they wanted to rule them, just with the stipulation that he could not also be king of France (even though those ties did continue to matter, as in both intervening in the American Revolution; and both siding with each other in the revolutionary wars). Sovereign equality did end up prevailing but after a war and under certain conditions.

The Treaty of Aix-la-Chapelle grappled with the nature of sovereignty, but it has not been examined within the context of sovereign equality, that the author can find. Maria Theresa and her husband had the legal and dynastical right to rule. The Elector of Bavaria, Fredrick II, had other plans and executed them well. While his coup did result in war, he remained the Emperor of the Holy Roman Empire. One could argue, however, that because the government was behind Fredrick II and not Maria Theresa, that sovereign equality was upheld. But again, its application was uneven because Great Britain and France were involved in the war. What is most interesting is how many of the states in the Holy Roman Empire were involved in the process and had a say with the Emperor, as well as the outside powers.

The Congress of Vienna (1814) dealt with the repercussions of Napoleon invading other countries and compromising their sovereignty. There were two actions that were not in alignment with and invaded the sovereignty of nations. One of these actions was when the Congress established the German Confederation. With respect to the German Confederation, it did well in that it protected the country. It was weak and did not appear as a threat to another country's power, but it was just strong enough to hold itself together for a time. It collapsed when the competing interest between the two powers that ruled it caused it to collapse. The Confederation was subject to two outside powers, Austria and Prussia, which was a blatant compromise of its sovereignty.

The second action was when the Congress also made Holland and Belgium one country, and Sweden and Norway one country. None of these governments wanted to be joined together nor did they last long together. The Congress did good and bad things, just like any other treaty. In some instances, like when resetting the boundaries, it did well. It did not succeed in building back up the compromised governments and establishing peace in Europe.

The Treaty of Versailles did some things well, and some not at all. The League of Nations specifically had several flaws in its membership and structure. The Treaty also failed to establish peace in Europe and put a large burden on Germany specifically that it could not bear. Phillimore argued that treaties should not impose so much on a country that they can no longer endure.[273] The Treaty of Versailles definitely did this to Germany. In general, the Treaty struck a compromise between the disputed territories having sovereign equality and being a spoil of war. Most of the time, when dealing with a valuable territory, the Treaty dictated that an Allied country would control it for a set amount of time. After that, the territory was to hold an election

[273] Phillimore, *Three Centuries of Treaties of Peace and Their Teaching*, 6.

to determine whether or not it wanted to continue under the Allied government or revert to German control. This is definitely evidence of the development of sovereign equality and it being invoked, but not to its full extent.

Despite these flaws, the League of Nations was the world's first attempt at an international peace organization. This is undoubtedly an important step in world history. The first attempt of anything is bound to have flaws and the League is no exception. At the very least, it is the first time that countries across the world agreed to commit themselves to continually discuss world affairs. This in itself is a major step toward international cooperation.

The United Nations Charter is, perhaps, the most obvious compromise between sovereign equality and the rule of power. While it was definitely a compromise between the two, this is not the first time that such a compromise was made. It is compromise that has consistently been made since the concept first came to be recognized. During the colonial period, there was an obvious compromise between sovereign equality and the ruling nations. Europe and other colonizing nations essentially said: everyone at the top is equal but everyone at the bottom is not equal to us. This transitioned into these powers become the "protectors" of these less powerful nations. The smaller nations spoke out against the powerful nations but have had limited success so far. The history of sovereign equality is showing how these nations are grappling with the concept of all governments being equal. Sovereign equality had become something that needed to be invoked in the international setting even if it was openly denied.

All of these moments show an increasing acknowledgement and utilization of sovereignty. Its development has not been perfect, but it has gained prominence since the Peace of Westphalia and the Treaty of Utrecht.

We can acknowledge the Peace of Westphalia as the origin of this principle's development. It did not directly say that all governments and states were equal, but it laid the groundwork for sovereign equality and began the conversation about what this might look like. The Peace was not the "majestic portal"[274] that Gross claimed and what happened next was not perfectly straight and linear. But Stirk was wrong to conclude that the Peace had nothing to do with sovereignty. The major flaw in his argument was that he did not look at religion as a factor or examine the affect that it had on politics before and after the Peace. We can see modern international law developing in the European states-system. It has "extended its sphere of operation," dealing more "with the fundamental facts in the relations of States."[275] The international system has not remained stagnant. It has developed as new states have been added and included. It stands to reason that sovereign equality has had to have been adapted as the system changed as well.

It does not appear that sovereign equality can be fully realized. It seems to be that the international system can get closer and closer to fully implementing it but will never fully do so. This concept is like infinity – we can get closer to it than we were, but we will never fully reach it.

Opportunities for Future Research

There are several topics that could be explored if the author had more time to spend on this project. Some of these topics are the shift from dynastic politics to constitutional governments, the relationship between sovereign equality and colonialism, what sovereign equality meant in the revolutionary era, and the relevance of sovereign equality in the wake of 9/11. All of these topics might have been explored if the author had had time to explore them.

[274] Gross, "The Peace of Westphalia, 1648-1948," 28.
[275] Edmunds, *International Law and the Treaty of Peace*, 4.

There was a gradual shift from dynastic politics to constitutional governments in Europe. The shift began with the Peace of Westphalia in 1648. By establishing a new states system, the previous dynastic relationships gradually became less important. The shift was complete when the Ottoman Empire was ended after World War I. There were no more empires like there had been in the past. All of the governments within Europe had some kind of constitutional government and was a part of the international state-system.

The relationship between colonialism and sovereign equality was a difficult, convoluted one. Colonialism is difficult to reconcile with the development of sovereign equality because it inherently detracts from the equality that is supposed to exist between nations. A colony suffers for the profit of the colonizing country. What brings sovereign equality into this is that the colony was under a previous government that the colonizer forcibly took over for profit. This act of taking over another government for the resources it controls is not justified by the law of nations.

In the revolutionary era, the recognition of the sovereign equality of a new country meant that they had joined the states-system and gave their government validity. Colonies were revolting and fighting for independence. The revolutionary governments that were successful, or even those that were not, were hoping to be recognized as sovereign by another power. This would give them validity and empower them to join the international system of states. The American Declaration of Independence (1776) invoked this sentiment: "...to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them..."[276] The Second Continental Congress was asking to be recognized in the international system just like other revolutionary governments at the time.

[276] *The Declaration of Independence*, United States, August 2, 1776.

Another example of a revolutionary government seeking recognition in the international system was the Haitian Revolution. Saint Domingue was in open revolt as the slave population rebelled in 1791 and violently took over the French colony. When the new government was established in 1804, the United States recognized it as sovereign. This was important for the new government because it gave it validity and allowed it to enter into the international theatre.

One of the effects of 9/11 is that it is considered justified to invade another state to protect a country's own sovereignty. The United States, specifically, began to engage in preventative wars after the attack.[277] This meant going into a weak or failing states to protect US citizens (and the state's citizens) from future harm. A weak or failing state is a state that is unable to implement or enforce policy within its boundaries.[278] These states are a humanitarian liability as well as a breeding ground for terrorism.[279] A weak government undermines sovereign equality. "It does so because the problems that weak states generate for themselves and for others vastly increase the likelihood that someone else in the international system will seek to intervene in their affairs against their wishes to forcibly fix the problem."[280] Because the problems in weak states seem to "leak" out of their borders, other powers tend to want to go in and make the government more stable.

[277] Francis Fukuyama, *State-building: Governance and World Order in the 21st Century*, (Ithaca, New York: Cornell University Press, 2004) 95.
[278] Fukuyama, *State-building: Governance and World Order in the 21st Century*, 96.
[279] Fukuyama, *State-building: Governance and World Order in the 21st Century*, 92.
[280] Fukuyama, *State-building: Governance and World Order in the 21st Century*, 96.

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