Canon Law, Dynasticism, and the Origins of International Law:

Sources of Order in the Sixteenth Century

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This paper is tasked to explore Hedley Bull's arguments in *The Anarchical Society* on the late medieval period, Christendom and canon law, and the origins of international law in the sixteenth century; international law of course being identified by Bull as one of the five principal institutions of "contemporary international society." As it seeks to understand and gauge the varying powers of these three sources of order in the sixteenth century, the paper must take care of obvious issues. First, it asks and attempts to answer the question, what was canon law and the *respublica Christiana*? What was the nature and extent of papal/imperial power in this era, such that it might give real meaning to the notion of a unified Christian *ecumene*? Then, what were the topics of early "international law" and how efficacious were

international law's rules in this period? Finally, how influential was the system of dynasticism, with all the rules, prescribed actions, and discourse it entailed? To accomplish these, I first look at the status of each of the three in the time up to 1500. Second, I look at historical case evidence of instances when these three sources of order were interacting in particularly useful fashion. The first of these is in the 1516-1522 period, and the time and politics of the Treaty of London (1518). The second concerns "the Spanish Threat and the English Problem" and the period of 1581-1588. First, however, I look at Bull's and English School accounts of what Christendom, international law, and dynasticism constituted in the sixteenth century up to 1648 or so.

The crucial point made in this paper, however, is that developments in what would later be known as "international law" are very tentative, well into the 1700s. This is especially clear when contrasted with the rules and accepted practices of dynasticism, which provided European "inter-dynastic society" with a detailed set of rules, expectations, and accepted practices governing almost all war and peace issues in Europe. Dynasticism is the missing pillar of Bull's early international institutions, was the key source of "solidarism" (of a kind) and was as much the common culture of Europe as Christianity, if not even more so. Yet dynasticism's existence and impact is almost never acknowledged in the English School, Bull, or IR generally. A focus on early "international law" - when it ignores laws of inheritance, marriage and succession - is misguided and retrospective, missing what was powerful and unique about the period up to 1789. Instead, the English School, like many theoretical perspectives in IR, tends to make Christendom much more than it was, and also emphasizes the philosophical arguments of noted thinkers of the period, as somehow effectual in guiding international behavior. This is in large part because they miss or neglect dynasticism entirely, the real source of order well up into the eighteenth century. In fact, dynasticism and what might be called "*raison de famille*" were so powerful that they actually prevented a functioning international law from developing within Christendom, from Christian precepts (or *raison de dieu*), something that might very well have happened in different circumstances. And dynasticism greatly delayed the development of the classic positive international law most IR scholars find relevant.

In short, dynasticism is the central ordering concept in what Bull unfortunately labeled "Christian international society" and European international society, and is so powerful that it prevents other sources of order from developing.[1]

I. Bull and English School Accounts

The opening question of the international law section of these six linked panels asks about the role of canon law, and whether canon law provided a single space for the adjudication of disputes under Christendom. It then asks us to examine the transition from canon law to positive international law. To begin, I review Bull's own findings on the matter.

A. Bull and the Transitional Period of "Christian International Society," 1500-1648(?)

[1] Indeed, we find that international law can actually only develop, ponderously, in what were for decades relatively minor issues outside the realm of European dynastic culture: What to do with peoples and lands in the new world, Africa or Asia? How to deal with global shipping, overseas trade, the seas, and piracy?

Bull's discussion of the formative period of international law takes place in a section of *The Anarchical Society* entitled "Christian International Society," a label Bull doesn't really define but that seems to be a transitional period when the "universal political organization of Western Christendom" was gradually disintegrating, in the fifteenth, sixteenth and seventeenth centuries (p.27). (As fn: Would the period in Europe before the CIS be called "Christendom" by Bull, or is CIS a term which stretched back to the eleventh or twelfth century, perhaps? Bull doesn't bother with precision here.) It is a time when there are three "patterns of thought" attempting to describe international relations as they develop in this awkward period. One of these are what might be called proto-realists like Machiavelli, Bacon and Hobbes, who saw emerging states confronting one another in a "social and moral vacuum" as Christendom faded (p.27). On the other side are papal and imperial writers fighting a "rearguard action on behalf of the universal authority of Pope and Emperor" (pp.27-28).

In the middle is the crucial third element Bull is most concerned with, a group of thinkers that asserted, "relying upon the tradition of natural law," that the princes then emerging from local and external constraints and authority, "were nevertheless bound by common interests and rules" – early international law in the guise of natural law (p.28). Here he quotes at length from his key source, Gierke (1957), who also identifies these three contending approaches and highlights the natural-law thinkers:

> But the doctrine which held the field, and determined the future of international law, was the doctrine that steadily clung to the view that there was a natural law connection between all nations, and that this connection, while it did not issue in any authority exercised by the Whole over its parts, at any rate involved a system of mutual social rights and duties (Bull 1977: 28, quoting Gierke 1957: 85).

The key figures are "the natural-law thinkers of this period (Victoria, Suarez, Gentili, Grotius, Pufendorf)." Bull's focus is on this group and on natural law, before positive law. This puts us firmly in a very long sixteenth century from Vitoria (1486-1546) to Suarez (1548-1617) and Gentili (1552-1608) to Pufendorf (1632-1694), who then appears, according to Bull, to be the last of the early natural law internationalists (though Cavallar argues that Kant was). These figures were the "early internationalists" who were putting forth natural law ideas because they felt existing positive law (canon law? – Bull mentions it once, in passing) was no longer relevant. They wanted princes to be bound and constrained from violence because they were men, not because they saw a society of competitive states.

But Bull also offers a note of warning in a key passage:

> Thus the early theorists of international society were all contributing to the development of what was later called 'international law,' one of the central institutions of the society of states, but they did not, as we have seen, seek to found the law of nations primarily on the actual practice of states, and their preoccupation with natural law and with divine law was one which *was bound to inhibit the development of international law as a distinct discipline and technique*, different from moral philosophy and from theology (1977: 30; emphasis is mine).

Though Bull and the English School do then proceed to spend considerable time on these same moral philosophers and their arguments. Bull is wonderfully apropos in his description of the ways in which law, philosophy and theology are mixed together in a confusing manner. And very correct that this confusion would inhibit the development of a positive

international law as such, though he appears oblivious to a factor that even more powerfully prevented the development of positive international law: dynasticism and *raison de famille*. For there was a law guiding "the actual practice" not of states, but of the truly key actors – monarchs, princes and dynasts – and this was dynastic law on marriage, succession and inheritance. We do not have to wait another two centuries to see rule-governed actor behavior, we need merely to look at the proper set of practices and rules in effect: dynasticism.[2]

Bull's discussion of the key elements of natural law internationalist thought reveals two problems: 1) that he goes along with their endowing of Christian values with considerable influence; and 2) that he is in part trapped in retrospective analysis in this section and time period, dwelling on elements the Christian IS did and did not possess, with a view to the European IS to come (Bull 1977: 28-29). These elements can be enumerated as follows:

1. "the values which they held to underly the society were Christian" (p.28);
2. relations among Christians were different from that with others; there was a "narrower circle of Christendom," bound by "divine law," customs, rules and "canon and Roman law" (p.29);
3. there was no criteria for membership in the CIS; states were "not yet" identified as central;
4. they wrote of a variety of units that might be societal members – *civitates*, *gente* and *respublicae*;
5. primacy was accorded to natural law, "supplemented by divine law" and other sources (p.29);
6. the subjects of law in the period were individuals; they upheld the principle of *pacta sunt servanda* (agreements are binding), but this held only for the princes that had actually entered into treaties (p.31);
7. they had no notion that violence and warfare was to be the privilege of state actors (their just war arguments were focused on individuals); they were also still trapped in Thomist ideas of just war, and did not eschew private war;
8. they held universalist assumptions that featured an inability to see sovereignty and mutual recognition as key features of a society of states.

Thus, it is evident that for Bull the period 1500-1648 is characterized by the lingering impacts of an effectual "Christendom," with portents of the Westphalian world to come. And in the end, Bull discloses that the state-centric Westphalian world was born and/or chosen out of this confusion, by states themselves:

> It was the inability of states to agree about the rights and duties of individual human beings and about organizations such as the Papacy and the Empire that led them in the formative years of European international society to the conclusion that order was best founded on a system of international law of which states alone were subjects, and from which the divisive issues of the rights and duties of individuals and groups other than the state were excluded (1977: 152).

Even though the natural law thinkers were obviously cognizant of the fact that they lived in a world of princes and kings, Bull skips over a chance to discuss dynasticism.

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[2] Bull's comments also might suggest that, in looking at the sixteenth century I may be focusing on too early a period in this paper, though this is presumably a time in which canon law was effective but fading, and therefore still a reasonable period to investigate.

The final step for Bull seems to come in the mid-eighteenth century, when positive international law begins, and Bull identifies a new set of thinkers for our attention: Wolff, Vattel, Moser, Burke, Heeren, Ranke, Castlereagh, Gladstone, etc (p.32). Bull cites Pufendorf's *De systematibus* (1675) as one of the first references to a "system of states" (1977: 12). But he says it was the writers of the Napoleonic period that publicized the idea, in defense against Napoleon's predations – they (Heeren and Gentz) were "protagonists" of it. And "natural law gave place to positive international law" (1977: 33); based on the dates of key publications, this takes place after the 1740s. What marks the change? It has nothing to do with dynasticism, at least according to the ES. Instead, 1740 more or less marks a transition in the Enlightenment and the rise of nationalism and national societies. This period is finally about international society as a society of states, and all are equal; it is about state sovereignty and recognition (1977: 34). Key language came finally from Vattel, who wrote of "the rights which exist between Nations and States, and of the obligations corresponding to these rights" (Bull 1977: 34).

Bull on the Sixteenth Century
There is much to applaud in Bull's account. He is quite correct as regards the underdevelopment of international law as traditionally understood in this era, and as regards the confusing way in which philosophy and natural law principles inter-mingle here. But very incorrect as regards the explanatory power of Christendom and its attributes, such as canon law. And he still grants the "early internationalists" and philosophizers a lot of attention and impact, ignoring other themes for this period. These were philosophers primarily, and they are not the best source for understanding international law or order in this period. Other perspective and sources (treaties of the time, for example), as we will see, better allow us to gauge the influence of international law in this period.

Second, another way to look at change in this period is to look at what the powerful people of the period wanted. That would be dynasts and royalty and they would accept things that would benefit them. They wanted the dynastic system to work smoothly, they probably also wanted legitimacy and recognition. Dynasticism was key, but Bull scarcely mentions it and we find no ES accounts of those practices.

Edward Keene (2002: 36) highlights Bull's comment (1990: 90) about how this period was "institutionally deficient." I think this is very telling, and merely highlights the English School's own misunderstanding of an important phase of history, when in fact "international" politics were remarkably ordered and predictable – by dynasticism, inheritance and marriage, claims and succession wars, etc. – though perhaps not in the ways a state- and Westphalia-centric perspective (and discipline) might expect and look for.

B. Other English School Treatments of the Period

The English School's confusion about this period, reflected in Bull, is not corrected by others until very recently, in the work of Andreas Osiander and Edward Keene, for example. Worse, the ES positions on a variety of theoretical and taxonomic issues related to historical interpretation of the period 1500-1700 are very confusing. There is no agreement within the ES on these questions either, and a subtle hesitancy to deal with them systematically. Some of this is not surprising given that the very first steps by Martin Wight on the three traditions were awkward and prematurely synthesizing (Keene 2002). I look quickly at three relevant

issues: 1) the origins of confusion in the development of the three traditions, and the status of philosophical arguments and law; 2) ES accounts of Christendom and canon law, 3) treatment of dynasticism, or lack thereof.

1. The Three Traditions and the Status of Law and Philosophy. A big part of the ES's research program is based around the "three traditions" of international relations thought it identifies: realism (and Hobbes), rationalism (and Grotius) and revolutionism (and Kant). But Martin Wight's and Bull's account of the three traditions and their origins also commits the first fatal step, in accepting both the focus on major thinkers and philosophy as the key developments, and the Westphalian trope, as accurate. Yet Wight's three traditions (*International Relations: The Three Traditions*, 1991) defy dissection, clarification and unraveling. Edward Keene (2002: 30-34) discusses Wight's dangerous mixing of Otto von Gierke's and T.J. Lawrence's categories, developing three traditions that are full of tensions and contradictions. Especially awkward is the Grotian thread, for example, which merged natural law with positive law into one. Thereafter, as Keene observes, Hedley Bull just cut through Wight's tangles by simplifying everything massively, but with further ill effects, unfortunately.

These traditions are foundational in the ES, yet problematic for the reasons Keene asserts, and for other reasons as well. First, they put the focus on thinkers and philosophers and their dreams and aspirations. What of empirics, and the real details of actor behavior and early international law? Many in the ES spend a lot of time on Vitoria and Suarez, for example, and their theoretical discussions of human rights questions. Bull (1990: 80-81) reviews Vitoria disputing the idea that non-Christian peoples had no right to property or political independence. Gentili appears here and there, and Grotius of course gets exhaustive treatment. David Armstrong discusses international law in this period as mostly on "the rights of ambassadors or the treatment of aliens" (1993: 25). He emphasizes Vattel as the one who says Westphalia is the turning point after which law is based on the consent of sovereign states. Yet, these figures are mostly philosophers and their work was on debates in political thought, and often about issues outside the cockpit of Europe.

Bull rightly observes that this is the natural law period, which blurs philosophy with nascent "international law" too easily. Importantly, and as we will see from case discussion below, these great thinkers are people that can <u>later</u> be seen to be foundational to present-day international norms, but were much less able to shape behavior at the time. (Indeed, most international law scholars would say there was no international law in the sixteenth century, or that it was extremely limited in use and impact.) Philosophers and natural lawyers, living in a world of ideas, should not be our primary focus for understanding the sixteenth century.

Instead, I think it could be said that the ES is really only on solid ground once the world actually starts to look like what it desires it to be, around 1670-1700, and a society of states and less of *raison de famille*. This leaves the ES with no satisfactory account of the 1500-1670 period, or of the world before 1500 for that matter.

2. Christendom and Canon Law. There is little elsewhere in the ES on Christendom as such, or canon law and its role. Wight (1978: 36-38) mentions the Schism and the Council of Constance. Wight is conscious of Christendom's decline. Constance was the last great meeting presided over by the Emperor and Mantua (1459) was the last one presided over by a pope.

Armstrong (1993) provides one of the more extended treatments of the Church and Christendom in the English School. He accentuates the notion of universalist claims, placing Christendom alongside the Chinese and Roman empires as things closely approximating the idea of a "universal society," at least in their aspirations. A universal society is based on a notion of universal authority, and could be about world government, as would an *imperium* or some kind of "hegemony exercised world-wide by a single state." He finds that Christendom is universalist because it is "based upon an ideology with claims to universal moral and spiritual authority" (p.17). In historical terms, it is best seen as "marking the transition between the universal society of Rome and the society of sovereign states" (p.21).

Watson (1992, Chapter 13) makes similar arguments, highlighting the spiritual unity and the strong feelings about war and killing of Christians versus non-Christians (citing Aquinas for this). It seems that Christendom for him is mainly a phenomenon of the 11th to 14th centuries. Watson then skips up to 1460 and emphasizes the appearance of the Italian *stato* and its spread to France, England, and Maximillian of the Holy Roman Empire.

Then we find more recently Robert Jackson (2000), who buys into the *respublica Christiana* notion entirely and says it only died with "Westphalia and Utrecht." For Jackson (2000: 159-161) the ties of Christian morality, solidarity and unity were gradually broken by Machiavelli's ideas, the Reformation, and finally and most definitively by 1648 and the Westphalian settlement, which vitiated the Empire's status. But Jackson also appears confused because of natural law rhetoric that persists in this period (as does Bull at times). For both Bull and Jackson are wrongly equating natural law "talk" or discourse with the lingering effects of a functioning Christendom.

Finally, it is highly significant that the ES does not discuss canon law in detail anywhere. While perhaps a small issue, this is particularly problematic because then there is no accurate understanding of "Christendom," whenever that may be said to have prevailed, and the subsequent transition period (1500 to 1648 or 1675), is not well understood either (Green 2006). Neither era is considered on its own terms.

3. Dynasticism. What of dynasticism in the ES? Bull does mention dynasticism in the Anarchical Society (p.33), but fleetingly, and merely as a phase in the development of the state: "when the state came to be fully articulated, first in its dynastic or absolutist phase, then in its national or popular phase." Later (p.35), he dismisses dynastic or monarchical international legitimacy as not really dictating the course of events. Bull does note (1977: 35) that Wight (in 1972 on "International Legitimacy") discusses dynasticism, in that before 1776 and 1789 the key units were "hereditary monarchies." Given the strong state-centrism of much early ES writing, by Bull or Wight, dynasticism is interesting as a phase in state development, not as a logic of action in itself.

One might certainly expect Adam Watson's more recent book, *The Evolution of International Society*, to deal with dynasticism, since large portions of it are basically a European history survey and it finally provides an extended ES account of the details of the era. Indeed, Watson covers the 1500-1648 period in two full chapters (15 and 16), but here again we are left wanting. The theme is retrospective analysis, from a Westphalian point of view – the rise of states, the appearance of balancing, and advent of *raison d'etat* equated with Machiavelli. There is occasional mention of the power of family interests, particularly the Habsburgs, but the point is to illustrate how this becomes a hegemonic ambition that elicits counter-

balancing. Analysis of dynasticism as a phenomenon, and as something which dictates the content of *raison d'etat* itself, is missing.

Watson and Robert Jackson (2000: 160) both highlight the appearance of *raison d'etat* thinking with Machiavelli, but do not register the full implications of the fact that this was advice for princes and individuals; it was truly for "states" only when "*l'etat, c'est moi*" norms prevailed, under the values of dynastic proprietary territoriality. For this reason it is better to speak of *raison de famille* (as I have termed it here) for the period when dynasts were the actors, and not states. Indeed, Wehberg (1959) makes this very point, that it was Hobbes and Spinoza that provided the breakthrough on reason of state much later, holding that it concerned the good of a given country itself, not of the dynastic family in power. The transition from *raison de famille* to *raison d'etat* is then of paramount importance, but not remarked upon by the ES, who ignore dynasticism and, having little interest in anything else, read the state backward into the early sixteenth century. Yet it is only after this transition that international law can truly start to form, in the late seventeenth century. Bull gets the date for the flourishing of international law right, in that sense, but not the explanation.

Summary: Bull and the English School on International Order, 1500-1648

There are several problems with Bull's and other English School analyses of this period, pitfalls most of IR falls into, actually. First, there is a retrospective analysis that reads the presence and importance of international law backwards into a period where it had almost no significance; a similar charge can be laid against state-centric analyses in the period as well. What will hopefully become clear in the pages below is that "natural law philosophy" and its concern for international legal principles coexisted alongside dynasticism (which all analysts leave out) from 1500 to 1713 at least, but had minimal influence and certainly did not overshadow it.

Second, most in the ES and throughout IR hold a false image of Christendom. Scholars have been unduly under the sway of the so-called "medieval model" (Bense 1972). This is the medieval fantasy story of "a Christendom united under the cross and the papacy, ideally at peace within and at war only with the infidel" (Bense 1972: 168). The dream of a unified Christendom was definitely propagated as an ideal, and featured in the Peace of God and the First Crusade initiated by Pope Urban II in 1095. And papal lawyers had been proclaiming the universal powers of Rome for centuries. All these are reflected in accounts of the power of canon law as well. Allen Hertz (1991) states it boldly, making a formalistic argument about the power of canon law and finding that medieval treaties, for example, were "binding in canon law by virtue of ecclesiastical jurisdiction over solemn oaths" (p.425). Princes and kings were Christians and therefore subject to the pope via acts of sin, such a perjury and oath-breaking, if nothing else. Hertz can then lament that the Reformation "destroyed Christendom's legal unity" (making possible the emergence of classical international law).

Yet these niceties were never observed, and the papacy certainly did not control sin. And, ironically, it was actually Renaissance humanists who formulated and promoted the specific idea of *respublica Christiana* as a place of peace and Christian solidarity; it wasn't there before the 1460s, when Pius II, the first humanist pope, touted it in his calls for a new crusade to free Constantinople (Tuck 1999). It was vigorously promoted by key humanists around 1500 and after (perhaps as a reaction to the Machiavellian decadence of Borgia Pope Alexander VI). Men such as Erasmus and Thomas More were pacifists and promoted an image of peaceful unity for the Church. But the Church was never pacifist, or at least not since the

eleventh century, as demonstrated most recently by Christopher Tyerman (2006), who describes the outright validation of war by clerics and the Bible in this period.[3] The frequent use of the call to crusade by the papacy after 1250 as a means of waging war on Christian enemies of Rome is further evidence of this.

The notion of peaceful, united *respublica Christiana* is thus better characterized as a purposeful social construction. It came from outside the Church and much after the fact as it prospered around 1500 (an effort to revive a heyday of 300 years previous?), just as the final schism of the Reformation was about to hit. It does become a rival, contending discourse in the difficult period from 1500 to 1700, of course, but weak by comparison to other behavioral scripts and ordering concepts, such as dynasticism. Indeed, the ordering logic of dynasticism drowned out all contenders, including a Christian *raison de dieu* or a state interest-driven *raison d'état*.

Nor is this to say that sovereign states and realist calculi prevailed, a la Markus Fischer (1992). Osiander (2001) is careful to refute this, chastising IR for the obsession with sovereignty and for thinking "far too much in terms of independent territorial statehood" (p.120). He cites R.B.J. Walker's wonderful 1995 indictment of mainstream IR's "discourse of eternity" on such things, one that endows a timelessness to a world that in fact emerged mostly after 1815, or even 1918 (see also Sharma 2005).

What all are missing is the importance of dynasticism - not sovereign units or international law - as the central concept for understanding European IR in this period. Dynasticism seems to have been ignored by the ES and other IR scholars because it didn't fit well either with the Christendom trope or with Westphalian state-centrism. Yet the idea that "international law" is a central issue to understanding the international relations of sixteenth or seventeenth centuries is wrong-headed. And the same can be said about canon law as some kind of proto-international law for Europe in this time-frame or before. Dynasticism, on the other hand, was a kind of law for IR, one widely recognized and accepted throughout Europe – institutionalized in the true sense of the word. It did rule and order relations in this period, pushing aside other contenders. Hopefully the rest of this paper will demonstrate these points further and convincingly.

We can also learn from other periodizations, such as that of "the German School" as described by Georg Cavallar (2002). He argues that it is much later, only after 1815, that "positive law" takes over; and by this account, Kant is the last great natural lawyer. The age of the British in international law, from 1815 to 1918, is finally one of positive international law, and has the standard of civilization within it as well. Yet with this move proto-international law no longer has the pretense to universality, and is instead clearly determined by (European) state expectations. This also means it can be used to exclude unworthies outside European international society.

In sum, the steps taken by Wight and Bull, to choose philosophical developments of Vitoria, Gentili, etc., as primary for understanding the "pre-state" period, are a mistake. These philosophical-legal debates are mainly confusing, and distract us from what is really

[3] Most people were illiterate and thus dependent upon clerical interpreters of scripture. The Old Testament was more strongly emphasized at the time and is full of war and massacre.

significant in this period. It is only when we come out from under the spell of Westphalia and the myth of Christendom that accounts of the period will be put on the right track.

I proceed next by examining the health and influence of the contending sources of order, up to 1515 or so.

II. Contending Systems of Order and Power, to 1515

The next section of this paper looks at contending sources of order in two case study periods, at the beginning of the sixteenth century around 1515-25 and at the end of the century, around 1585-90. But first I will move beyond ES discussions on these issues, to look at the general evidence for influence of these contending sources of order in the late fifteenth century, to 1515 or so, to get a baseline for looking at possible change over the century. I look at four sources of order: canon law, the Papacy and Empire above canon law, international law, and dynasticism.

A. Canon Law within the Church

The English School never really deals with it, but what was canon law? What were its topics? Did canon law provide a common (legal) space for Europe? Canon law is about church business and church power over secular life, and was the law applicable in ecclesiastical courts. By reason of sin (*ratione peccati*) and the policing of it, it held power over all Christians (Hertz 1991). It is quite expansive and covers hundreds of topics from marriage to dress codes to clerical leave time to proper baptismal rites (see Lydon 1934). As part of the Church's effort to establish a kind of all-encompassing theocracy in Europe and a "papal project for bringing the administrative perfection of the kingdom of heaven to a sinful world," it dealt with all the "intimate details of people's lives, habits, and moral conduct" (MacCulloch 2002: 29). Because the Catholic Church was so ever-present in popular life at the time, canon law did cover much of social behavior and activity writ large. It drew from Roman law and was interwoven with it (Lesaffer 2005: 34-36).

The Curia certainly did hope that canon law would govern "international relations" of the time, but it didn't, and certainly not by 1500. Yet canon law could be a source of power over more secular, political and princely affairs across Europe. Two chief means the papacy could exercise power through canon law were via excommunications (on individuals) and interdicts (on entire towns/cities/regions). Trexler (1974) discusses the details of papal powers of excommunication and interdict. The bite in both kinds of measures was that both meant the offender was deprived of legal protection and was prevented from performing any legal acts (Russell 1986: 25). This meant that merchants were very vulnerable – they couldn't guarantee their goods and debts along their trade networks, nor pursue legal action for anything.

The harshest sanction was deposition of rulers, though this wasn't usually very effective (Trexler 1974: 11). But excommunication of communal governments in Italy was powerful. While these all have been said to have lost their sting from overuse, this is not entirely accurate. Trexler (1974: 8) describes the escalating chain of penalties; excommunication and interdiction were only milder penalties; higher ones included the ordering of priests to leave an interdicted territory, and so on. If a king/prince/leader continued to defy an excommunication for a year, the papacy could proclaim a crusade against that leader (Russell 1975).

Table 1: Some Notable Papal Interdicts of the Period

Venice – 1483 (Venetian govt kept it a secret, made sure that church services continued)
Venice – 1508 (Venice tries to go over the Pope and appeal to a General Council)
Venice – 1606

These all could be quite powerful, though they weren't used to prevent killing and Christian fratricide, etc. In fact, the abuse of such measures by the papacy, for its own princely interests, is a prime factor reducing papal prestige over time. Did canon law really govern war and peace issues in a significant way, as often described under the "medieval model"? Mostly not, though it depends on the situation. There were times when the Church brokered peaces (Treaty of Arras, 1435), and many times when they tried.

Problems for the Church in maintaining its influence included the growing independence of "national" churches in France, Spain and England (see Schimmelpfennig 1992: 247-249; Levi 2002). These stemmed in part from the Great Schism of 1377-1418, when there were at times three popes and great chaos in the Church. But it was also due to colonization of national churches by dynastic power considerations. There were great battles over powers of appointment to Church positions throughout the fifteenth century, almost all won by national dynastic families. (The French church had been largely under French royal authority since 1300, reconfirmed by the Pragmatic Sanction of Bourges in 1438.)

There was also the rot at the center, in the (Italian) dynastic/family colonization (Borgias, Colonnas, Medicis) of the papacy after 1418; *raison de famille* penetrated the Church itself, with ridiculous nepotistic excesses.

There were of course many ways in which the appearance of the paramountcy of Christendom was maintained. Treaties were promulgated at religious ceremonies, often over a relic or the gospels (Russell 1986: 21). Mattingly (1988) notes that most principle ministers and key advisers of princes and kings also held high positions in the Church, at the rank of bishop or even cardinal.

Finally, there were important international regulations and/or treaties decreed or sponsored by the papacy (though it is difficult to say whether these are part of "canon law" as well). For example, Portuguese voyages of exploration and conquest in the Atlantic and around Africa were authorized by several papal bulls, most prominently *Romanus Pontifex* of 1455 (see Rubin 1992: 11-13). Columbus' discoveries in the new world were thus immediately challenged by the Portuguese in March 1493, and Ferdinand and Isabella were compelled to quickly seek mediation and a decision from the Pope, to delineate a boundary between claims. The famous Treaty of Tordesillas, however, which actually decided things, was done entirely outside papal purview, however, and is a secular document (Rubin 1992). Of course, it may be that these bound and influenced behavior because the Portuguese and the Spanish were more - or were reputed to be more - Catholic than other monarchs and so they would accept such rulings.

And later, Rubin (1992) describes Vitoria as trying to use legal reasoning to constrain kingly authority and rights of conquest, but notes that he got pushed aside entirely. Dynastic interests prevented an international law based in Christianity from forming, prevented it for Europe, and for Europe's relations outside as well.

Of course there was a tremendous general influence of Christendom, and connection between canon law and early international treaty law, for example (Lesaffer 2000), but it was also tenuous. Lesaffer finds that it was canon law that gave us the practice of consensualism in early treaty law (that both parties should agree to the features of agreements) and the principle of *pacta sunt servanda* (pacts are binding). But as we shall see, the first of these is not that significant and the latter was not at all upheld.

B. Papal and Imperial Influence and Power

There is another way in which Europe could be thought of as united or as a "unified Christendom" and this is due – beyond the realm of law or canon law - to the sheer material and symbolic power and leadership of the two great positions of Christendom, the offices of Pope and Emperor. These were the two great trans-European political offices of the time, and may have given it the sense of a single polity. Both had powers across much of Europe and were elected by actors from across Europe as well, in what were great political contests. Thus we can imagine "Christendom" prevailing as an international order not because of common canon law, but due to the sway of its other institutions.

But this is not the case either. The symbolic power of the papacy and Empire remained a presence in Europe, of course (Russell 1986; Schimmelpfennig 1992; Armitage 2000: 30-33). There was a continuing understanding that popes and emperors were supposed to be protectors of Christendom, and they always went through the ritual of pressing for crusades. But people were quite cynical and scarcely inclined to pay attention to these projects by the sixteenth century. Indeed, the rather distant year of 1291 is a good marker for the end of Christian solidarity, for that was the year that the last Christian territories in the Holy Land fell. And in spite of countless pledges, nothing was ever recovered and no crusade ever returned to the Holy Land (though there were many crusades held against other Christians!). By 1515 "Christendom" was even further in decline.

The papacy also had power over various taxes and tithes and the extensive Church properties, and could at their discretion also grant these to monarchs, for services. Further, a great deal of papal/imperial power and influence stemmed from their ability to intervene in what were essentially dynastic matters, of office, titles, inheritance and marriage. Both offices had power over certain rulership positions, including most prominently papal powers to appoint the ruler of the Kingdom of Naples, a vassal kingdom to the papacy. This was used to great effect to bring contending European dynasts into Italian power struggles on one side or another, and helped make Italy a favorite battleground before the sixteenth century. Pope and Emperor also had power to confer other titles, which were often highly coveted. The popes also had to approve questionable marriages and divorces, as in 1502, when papal approval was needed in the marriage of Henry VIII to Catherine of Aragon, his elder brother's widow; of course this would not be the last time Henry would grapple with the papacy over marriages.

But papal power was changing and gradually fading; it was weaker after the Council of Constance (1415-1418), for example. It should never be thought of in pure and absolute terms, for it was always situational and subject to dispute. It became captured by Italian forces after Constance as well. Then the death of conciliarism around 1460 was both a sign of

decline and a cause of further decay, since it meant the rest of Europe was giving up on reforming the Church.

Nonetheless, there were always papal canonists/absolutists who argued for Rome's supremacy. These might give the impression that Christendom retained a meaningful reality, and explain the confusion in the English School and elsewhere in IR. But the impression does not bear up to even a modicum of scrutiny (Green 2006).

C. What Was "International Law" in 1500?

"International law" as we know it today is scarcely a relevant term for the sixteenth century. A separate law of nations existed only in embryo. Such as it was, it drew fromor referred to a hodgepodge of sources: the *ius commune*, the Roman *ius gentium* mixed with natural law, and canon law, which was often more directly relevant than canon law (Lesaffer 2005: 36). Its topics were limited in number and its effectiveness within these areas even more limited. One might consider it to be mostly treaties and treaty-based practices, and certainly there was a constant signing of treaties, mostly about conditions for concluding peace and declaring war and allying. But these were rarely lasting and durable, so we might see the topics they cover and the patterns and precedents they follow, but they did not accumulate into positive international in this period.

Some minimal common patterns to early international law are evident. We have already mentioned the presence of consensualism and the principle of bindingness – *pacta sunt servanda*. In addition, the treaties were mainly between individuals, as state-based sovereignty and power centralization had not really emerged (Lesaffer 2005). So treaties between "countries" actually had to between many individuals – royal leaders, families and heirs, secondary lords, vassals and other subordinates.

The advent of an accumulating international law can somewhat be explained by the new problems of "addition" and "division," though law was remarkably slow to concretize. Developments were driven by a change in what is "the international": the appearance of the problem of the new, external aliens after 1492 and the new internal aliens after 1517, in the rise of Protestantism. The former was entirely outside the dynastic territorial realm, but was brought in successfully nonetheless. Of course Europe's answer to both alien challenges, for a hundred years at least, was not law- and rule-making but resolutions through the other ordering mechanisms – dynasticism and Catholic Christendom. Major legal debates took place over what to do with new found lands and the people on them, but these did not affect how these lands were disposed of; those who objected to violations of non-Christian rights were pushed aside (Muldoon 1980). Again, international law is really prevented from forming, even when the same troubling issues recur over a century and more, because of the strength of the other sources of order – dynasticism primarily. Indeed, Lesaffer (2000, 2005) makes the argument that an autonomous sphere of international law couldn't emerge because treaties were still so personal that they were in the realm of contracts. Only when they applied to states primarily, and stopped relying on mention mention of individual rulers, did this change, and that was in the eighteenth century. Lesaffer notes (2005: 34), that Lauterpacht had already noted the problem, that the "patrimonial conception" of the state was a barrier to the creation of positive international law.

This raises the question (one which I do not have time to explore here), of why there was no international law as the result of regular interactions with Turks and Moslems. A large part of the answer is no doubt that mostly this was a hostile relationship of violence and conquest, due no doubt to profound religious differences in a time when religious identity was so paramount in people's lives. But while religious antagonisms are a typical answer, interestingly, one also couldn't deal with issues in the usual dynastic ways, through marriage, family alliances and kinship, since marriages across religions were rare.[4]

D. Dynasticism

I have cheated slightly and saved what I think is the most important – the far too neglected ordering logic of dynasticism - for last. Dynasticism has always been central to the accounts of historians. Kamen (2003), for example, discussing Spain's rise, argues that it wasn't "states" at all which did things, but individuals. Spain did not start to have a national identity until the eighteenth century; until then it was a collection of localities and noble families. Mattingly makes the point as well (1988: 140): "The sixteenth century struggle for power had a dynastic, not a national orientation." Though even here, dynasticism is thought of more as a unit- or regime-type, rather than a system of rules that provides a greater order. (And though Mattingly talks about dynasticism a great deal, and Bull takes much from Mattingly, here Bull does not follow.)

There certainly are IR scholars and who have trumpeted the importance of dynasticism as well, though they are relatively few. Benno Teschke (2002) is exemplary, in perhaps the most sophisticated discussion anywhere of the proprietary rules of territoriality, of foreign policy strategies resulting, such as "outweighing" (this borrows from Mattingly, p.141; it refers to ganging up on someone to dismember their territories). Other IR scholars concerned with dynasticism include Vivek Sharma (2005) and Daniel Nexon, and Diana Saco who published a very important article on gender, marriage and IR in Elizabethan England (1997). She highlights the centrality of dynastic features and individuals as the actors of politics, going so far as to propose the use of "inter-sovereign relations." (I prefer the less confusing "interdynastic relations," which avoids mentioning "sovereign" and also connotes family relations, a more accurate descriptor than simple relations between leaders.)

The key individual behaviors of the era were not governed by Church law or natural law, but by dynastic customs and practices. Dynastic marriage is arguably the centerpiece institution, alongside succession and inheritance rules. Marriage was key to the functioning of the dynastic ordering logic. It did all kinds of things: arranged alliances, sealed long-term friendships, provided for representation of interests, sealed peaces and truces, granted recognition to new or upstart dynasties (Saco 1997). Though no count has probably ever been made, it is undoubtedly true that a clear majority of treaties in the 1300-1648 period included mention of marriages and promises of marriage to serve as guarantees of the agreements; negotiations for marriages were a major diplomatic activity.

Much like the vaunted "sovereignty" principle of the post-1648 era, dynastic ordering rules had the "constitutive" ability to create and destroy actors. For example, Burgundy was a

[4] See Goffman (2002) on the very different marriage and succession practices amongst the Ottomans.

vassal kingdom of the French Valois dynastic line but grew to be very wealthy and powerful; then it disappeared with the battlefield death of the Duke of Burgundy, Charles the Bold, in 1477. "France" itself was thus created, greatly strengthened by the absorption of parts of the Burgundian lands after 1477, and another dynastic coup in acquiring Brittany through marriage in 1488, the latter in turn totally changing English foreign policy (Thompson 1983: 238-239).

England's international roles and identity were also a product of dynastic elements. England was much more able to be an offshore balancer before 1534 because of the shifts in marriage patterns – delinking from the more proximate France, stronger links with Spain because of Henry's marriage to Catherine of Aragon, eventually much fewer links because Elizabeth I refused to marry.

Of course the actors knew very well how to use this system, and it could be the absolute centerpiece of foreign policy. Kamen (2003: 36-37) notes how Ferdinand of Castile "resorted systematically to marriage alliances as a way of pursuing policy aims." His schemes eventually produced the mega-figure of Charles I and V. And non-dynastic families moved heaven and earth to achieve this status and try and gain an inherited title of some kind.

While elements including marriage could be useful for promoting peace, dynasticism was of course also very good at creating wars. Two types in particular come to mind: what might be called "claims wars," and wars of succession. Claims wars were absolutely ubiquitous and might erupt at any time. They were simply the product of any claim to a throne or territory that a given actor might wish to pursue, and since inter-marriage and over-lapping sources of power (heteronomy) were ever-present, there were almost always claimants with a cause for military action. As a result, claims wars were the single greatest source of violence in Europe for several centuries, undoubtedly. An outstandingly damaging case was the Hundred Years War, originating in the claim of the English kings to the French-Valois throne; a second was the Valois claim to the Duchy of Milan and the Kingdom of Naples. These alone produced decades of devastating warfare in Europe.

A subset of these was the more specific instance of wars of succession, a variety of claims war that had potentially more explosive implications, if an all-out European war among many claimants was pursued to gain a crown. Succession wars had more specific causes, launched when a sitting leader died and a struggle ensued over the right of succession. (Though sometimes a war of succession could precede the demise of a ruler by years or even decades, if he/she was weak, mentally impaired, or viewed as likely to die without an heir.)

The fact that relations between "states" and territories were also inter-personal is crucial; it raises other issues, such as bribing of dynasts, pensions and payments which were key elements and instruments in inter-dynastic foreign strategy and were only possible because popular or national sovereignty had not appeared yet.

There was no sense of national interest, only dynastic/family interest; indeed as has already been noted, the most apropos terms for understanding relations in this era are dynasticism and *raison de famille* (Green 2006). This term is far preferable to the much more common *raison d'etat*, supposedly marking the abandonment of moral statecraft in favor of *realpolitik*, but since it is widely acknowledged that the state was the dynast in this period, true reason of state does not come in until national solidarity does.

The influence of dynastic factors was such that the course of European IR for centuries was largely determined by the rhythms of dynastic family life – deaths, births, marriages, fertility, infertility, kinship linkages. These shaped entirely the prospects for war and peace, alliances and conflicts. As will be seen below, other ordering logics were enfeebled by this presence, in 1515 and 1585, and would be still 200 years later.

III. International Law and Contending Sources of Order, 1516-1523 and 1582-88

This section will finally look at the contending sources of order in light of real historical case evidence. First it is important to provide an overview and background. In some ways there was a resurgence in papal influence in the decade after 1500, because of the shift of European IR to Italy after France's invasion of the peninsula in 1494 (the age of "the Italian Wars") and the onward march of the Turks in the Aegean and Near East, swallowing up Christian territories. Europe before the very real schism of Lutheranism was not a time of Christian peace and unity by any means.

Mattingly (1988: 142) wonderfully summarizes the concerns of a diminished papacy by the mid-fifteenth century. The popes' main goals were Italy-focused – keep an eye on who was running Milan and Naples and make sure the same power didn't have both. Rome's remaining influence across Europe was less than substantial:

> Rome might be, as Ferdinand of Aragon said, the 'plaza' of Europe, to which ambassadors came, and from which special legates and resident nuncios were dispatched; but it was only occasionally the centre of international arbitration. Secular rulers often enjoyed watching the popes struggle in a net partly of their own making. They could resist papal pressure, hector the Pope on his shortcomings and evil deeds, perhaps threaten a General Council; or they could, if it suited them, ally with him at a price (Russell 1986: 24).

The decline of the Church was aided by another trend by 1500: the further consolidation of the domestic powers and sovereignty of kings. This included steps in the centralization of administration and the territorial "containerization" of politics, often made possible by the merging or dying out of dynastic lines. Kings were asserting more powers than before, including warming to the habit of declaring themselves "emperors" in their territory (Armitage 2000), as the Scottish king James III did in 1469. When Henry VIII conquered Tournai in northern France in 1512 he declared himself "emperor" of it as well (Armitage 2000: 35).

We get a sense of the relations between "Christendom" and secular powers by glancing at Italy, then embroiled in conflict. When Pope Alexander VI (r.1492-1503) died in August 1503, Venice seized the opportunity to take some papal territories. War ensued, and in turn the League of Cambrai was formed in 1508 to discipline and pillage Venice. Venice was placed under interdict, and responded by trying to go over the Pope's head and appeal to a General Council. The pope of the time was Julius II (1503-1513), the "warrior pope" who actually led his troops into battle. He somewhat revived the papacy after the disastrous Alexander VI who cut up the Papal States into principalities for his family members. Julius locked horns with Louis XII of France, and in retaliation Louis did as Venice had attempted, arranging in 1511 for nine dissident cardinals to set up a Church council in Pisa (Rendina 2002: 440). The

intent was to create a schism and depose Julius. (In retaliation, in 1512 Julius came close to offering the throne of France to Henry VIII.)

By 1516 all Europe had been racked by war more or less since 1494 and the French invasion of the Italian peninsula. At the core of these conflicts were two sets of dynastic claims causing all the problems. Charles VIII had a claim to the Aragonese Kingdom of Naples, after the death of its King Ferrante in 1493.

The second claims problem was that of Henry VIII of England, in France. Because Henry VIII had a reasonable claim to the French throne, it made his relations with that country notably different (Gwyn 1990: 98). The claim made France a legitimate target and "provided a justification," conveniently, for invasion. It also meant that Henry had to endure a good deal of vacillating and trouble from likely "allies" like Ferdinand of Aragon (and later Charles), who knew they were not likely targets of invasion or attack at all.

At the papacy, the pope of the period was Leo X (r.1513-1521), a Medici from Florence and himself entirely a product of family politics in Italy and the colonization of the papacy by *raison de famille*. He was the son of Lorenzo the Magnificent (effective ruler of Florence from 1469 to 1492) and Clarice Orsini, and had been advanced quickly in the Church, being appointed Cardinal at age 13.

A. War and Peace, Law and Order, 1516-1521

There was much need for unity and peaceful order in European IR by 1515. Claims wars kept the continent in constant warfare, and the violence and expense were mounting. In October 1515 the French won a huge victory at Marignano, in northern Italy (Francois I thus gaining the Duchy of Milan), but the casualties were astounding for the period, at 16,500 dead. And the Ottoman Turkish empire was expanding by leaps and bounds, menacing the heart of Europe, as Hungary was about to disappear and Turkish galleys were increasingly seen cruising around Sicily and Sardinia. Certainly the state of legal order was deficient. As will be seen below, the idea of *pacta sunt servanda* was clearly not in effect, and a kind of nonchalant ritual typified much treaty-making, admitting no sanctity of contracts. Treaties were often done for immediate expedience, knowing that they would be repudiated in months, weeks or even days to come.

On January 26, 1516, the European applecart was upset by the death of Ferdinand of Aragon, who left his kingdoms of Castile (as well as Castile's New World empire), Aragon, and Naples to his 16-year old grandson the Archduke Charles of Ghent (ruler of Netherlands and Franche-Comté at the time). The latter thus became Charles I of Spain. This death and succession changed the entire power structure and strategic balance of Europe over night, and Charles was immediately the paramount international concern of France and Francois I. He became both France's most powerful neighbor and the ruler of territories Francois had a personal interest in (Knecht 1982: 66). One salient issue was the Kingdom of Naples. Francois had inherited the Angevin claim to Naples, and as soon as Ferdinand died he ordered a search of the archives of the counts of Anjou in Provence to find evidence supporting it (Knecht 1982: 66). Also Milan, then recently under French occupation, was an imperial fief, giving Charles a voice and stake in its fate.

Treaty of Noyon, August 13, 1516. We can begin the details of the story with the flurry of treaty-making that started with the Treaty of Noyon, signed in August 1516 between Charles I of Spain (soon to be Emperor Charles V) and Francois I of France. This treaty recognized Francois' occupation of Milan and claim to the Kingdom of Naples. Charles needed this treaty to get quickly to Spain, where trouble was brewing amongst the nobility, and take possession of his new territories. So he agreed – very temporarily - to several unfortunate features. Charles agreed to pay Francois an annual tribute of 100,000 ecus for Naples, thus recognizing Francois' claim to it. But once he got to Spain he realized he couldn't afford this, and never paid. He also agreed to compensate Catherine d'Albret for the loss of Navarre.

In England, Noyon was actually a diplomatic catastrophe for Henry VIII and Cardinal Wolsey. They had been trying desperately for months to form a league to surround France, working mostly with the Emperor and the Swiss, but hoping to include Pope Leo and Charles of Spain (Scarisbrick 1968: 64). They did succeed in late October in forming a pact with Maximilian against France, but paid a heavy price, forgiving all his debts and offering to subsidize an imperial invasion of Italy. But the encirclement attempt was dashed, and still more galling was that within weeks Maximilian had defected and joined the Treaty of Noyon, making peace with Francois. Maximilian's duplicity was astounding in this matter, as it turned out that the very day he was swearing allegiance "on the four Gospels" to Wolsey's league (Scarisbrick 1968: 65), a French rider came with a better offer. Maximilian effectively conceded that he would not achieve his desired territorial gains from Venice any time soon (Gwyn 1990: 100), but acceding to Noyon had another attractive element for Maximilian, in a marriage link with Francois (marrying one of his sisters), and the prospect of a sizable dowry.

The Treaty of Bologna, December 1516. A few months later, a treaty was signed between Francois and Leo X, in which Leo recognized French absorption of Milan, Parma and Piacenza. Leo in turn gained an agreement that Francois would not intercede in Leo's own plans to seize the Duchy of Urbino for his nephew (Norwich 1985: 432).

The Treaty of Cambrai, March 11, 1517. By this treaty, Francois, Maximilian and Charles agreed to aid each other if attacked, and also to join in a crusade (Knecht 1982: 68-69); secret clauses also partitioned Italy between them, at Venice's expense. But this agreement was actually known at the time to be not real. Francois, for one, was not serious, because of his claims in Italy and because he was so unlikely to stomach allying with an enemy like Charles for long. Francois included an escape clause, that the treaty was only in effect if his relations with Venice fell apart, and they did not. This treaty did however conclude this phase of the Italian wars and brought about a year of peace, in 1517.

We see a common pattern in these events. It is evident that neither canon law nor treaty law made much difference. Rarely do a treaty's provisions last more than a year or two, and in some cases they are known to be false even as they are being signed. The Treaty of Noyon was clearly an expedient, stopgap show that would not be taken seriously in even the medium-term. It temporarily bolstered Francois' claims in Italy, but Charles was obviously not going to give up Naples so easily, since it had become a centerpiece of Aragonese holdings in the Mediterranean (Knecht 1982: 66-67). Dynastic concerns determined everything and crowded out the other two logics of action. Dynasticism prevented stability in alliances and eroded the sanctity of agreements.

A Peace in Europe, 1518 – The Treaty of London
There was a small ray of hope in all this, however. For 1518 proved to be an important year for events in European international relations, witnessing major, continent-wide iniatives and the founding of a general peace that would endure for almost three years. Pope Leo X's peace efforts in this year, their failure, and the ultimate success of English efforts by year's end, nicely illustrate the rivalries between different sources of order, the attitudes of rulers and diplomats to papal and Church influence, and the ultimate power of secular and dynastic considerations over anything that the institutions of "Christendom" could put forth.

- *CAVEAT LECTOR – even more holes after this point*

In the 1515-1518 period, the Turks and North African Moslems were even raiding into the Tyrhennian sea and the coast of the Roman *campagna*. Leo was generally if intermittently preoccupied, at times to the point of anxious obsession, with dealing with the Turkish problem via a crusade, but was not well thought of in many circles and made many failed attempts to launch one since 1513 (Setton 1969).

Having tried many different tacks for devising a workable *modus vivendi* with the French, Wolsey came up with a new one in January 1518 – a full *rapprochement* with them, wrapped in a general peace.

But the papacy had its own agenda. On March 6, 1518, after worrying about the Turks for two years, Leo declared/imposed a truce on the major European powers so that he could pursue a crusade (Russell 1986: 32; Gwyn (1990: 100). He appointed four papal legates *a latere* to prevail upon the four principal rulers of Europe to adopt the idea (one to England, one to Germany to persuade Maximilian, one to France, and one to Spain).

These leaders didn't pay much attention to Leo's initiative, however. In England, Cardinal Wolsey wasn't particularly interested in the pope's plans and dismissed the idea of preparing for a crusade (Gwyn p.100). Maximilian decided to use the initiative to extort a key appointment from the pope, and England did the same.

In May 1518, Leo sent Cardinal Campeggio as his *legate a latere* to London to seek support and money for a crusade against the Turks. But Wolsey trapped Campeggio in Calais and refused to allow him in entry to England, while he forced Leo to grant him his own title of *legate a latere*, alongside Campeggio – this took three months to arrange (Wernham 1966: 33). By the time Campeggio arrived in London, Wolsey was already deep in negotiations with the French. Once granted this new position, Wolsey also took over Leo's plan and made it his own, and England's.

In September 1518 tough negotiations took place between France and England. Francois' position was changing, because of his ambitions in Italy and the rise of Charles. Finally, on October 2, 1518, a new Anglo-French peace treaty was agreed, but Wolsey decided to go

further and take advantage of the presence of so many diplomatic delegations in London, to expand it to "a treaty of universal peace and cooperation against the infidel" (Wernham 1966: 93). Though only France and England signed the first first version, it already carried strong protections and guarantees within it and foresaw signings by Emperor Maximilian and Charles within four months (Gwyn 1990: 98). So Maximilian and Charles of Habsburg were induced to join, along with Pope Leo.

Wolsey's Treaty of London was an amazing collective security pact – "the first attempt to establish a permanent and general European peace by diplomatic means" (Mattingly 1938: 2). The treaty had some novel, amazing features: it had no secret provisions, was inclusive of all Europe, and directed against no specific power; it said it was for a Christian peace and a crusade (but made no effort to pursue the latter). It included all the major powers and 20 minor ones.

It also had crucial dynastic and *raison de famille* elements: a subsidiary treaty established a marriage promise between Henry's little daughter Mary and the French dauphin.

Why do it? What explains this achievement? - sick of war?
- not afraid of the Turks too much, apparently
It was an important breakthrough of some kind in international relations, to be sure, though what precedents it set for international law are less clear. It also shows what could be done outside papal efforts. It was a humanist achievement; a secular power breakthrough where the papacy could achieve almost nothing.
- was it an effort to constrain Charles before he got too strong?
- it was an important success as well, bringing a full 30 months of peace to an otherwise war-torn continent

This is when the rhetoric of *respublica Christiana* really took off, with him and Erasmus (Tuck 1999: 28-31). Yet, tellingly, this impetus came from outside the Church, not within, from the new humanist philosophers and especially Erasmus, who published several important treatises in these years… Erasmus had a big impact (Gwyn 1990 agrees) and shaped the thoughts of many in Henry's court and in Rome. Ironically, these were the forces pushing a *raison de dieu* logic at the time.

A Venetian ambassador commented that Wolsey had taken over the role of pope (Wernham 1966: 93-94).
Leo's own motives are suspect as well. Yes, he was legitimately afraid that Italy would be Selim's next target, but it was also very much in his interest to turn Francois' attention away from Italy (Setton 1968).

We should not disparage papal influence totally, but it operates as we would expect. Wolsey was a cardinal, and this was a main source of some of his influence. And he had worked and lobbied hard in 1515 to get this position. Again, the papacy was an important source of titles and its imprimatur brought legitimacy.

A Peace Endures, 1518-1520
The next great death of consequence came in January of 1519, when Maximilian died after a winter hunt, and again this death ended up benefiting Charles I of Spain. It came in the

middle of the peace of the Treaty of London, and is a reason that peace lasted as long as it did, for the whole of Europe was preoccupied for the next six months, as the competition to succeed Maximilian unfolded. The election of a new emperor might have been a great opportunity to right previous bad practices and set Christendom on the right foot again. There was massive jockeying to influence the election of the successor – indeed, Francois had been trying to arrange his own election victory two years before Maximilian was even dead (Knecht 1982: 71-72). Henry VIII technically couldn't be a candidate because he wasn't a prince of the realm.

The leading candidate was Charles
The election was held in two parts in June.

The election of Charles raised anew the possibility of a united Universal Kingdom, and many enthusiasts for such a project came out of the woodwork (Russell 1986: 48-49). It also raised immediately the issue of Milan, since Charles was now emperor and the suzerain of Italy

Did Charles take his new post seriously? Might he have? While all kinds of awkward reasons explain the election of Charles, they might have elected someone for the good of Christendom.

In June of 1520, Henry VIII and Francois I meet at the Field of the Cloth of Gold and reaffirm the marriage alliance arrangement that had been made in 1518

The London Peace Unravels
The peace of the Treaty of London did not last much longer after the Field of the Cloth of Gold. Rivalry between Francois and Charles over territory was the catalyst, for the most part. Though they had signed a solemn collective peace, their personal ambitions made short work of it. And ironically, now that Charles was emperor and protector of Christendom, he became an even greater lightning rod for conflict.

Francois had wanted to return to Italy to thwart Charles in the autumn of 1520, but his mother became ill and he was prevented from doing so (Knecht 1982: 105). Francois also knew that Charles would want to go to Italy to be crowned by the pope, but he was afraid that on the way, Charles would re-take Milan.

Ironically, the peace of the Treaty of London was also brought down in no small part by the machinations of the Holy See and the Emperor, in Leo X and Charles, as well as Francois I, all pursuing *raison de famille* ambitions. – see Mattingly (1988: 146). Leo had the chance to acquire Parma and Ferrara

May 1521: Charles undertakes a secret agreement with Leo X

Francois also couldn't restrain himself from meddling in Spain; there was a fight over a claim to Navarre that Charles didn't want to recognize.

Early 1522 saw the election of the Dutch pope Hadrian (or Adrian) VI, who was a true reformer and did a lot to advance the cause of reform and propriety in the Holy See. He was an excellent example of the kind of person who might have run Christendom and given it some moral integrity. He also tried to fight the spread of Lutheranism in the Empire, then spreading quickly, but amazingly his enemies were happy to use Lutheranism as a weapon

against him. He feared the French would become their chief sponsors, because for Francois asserting himself in Italy and securing his claim in Milan was far more important than repairing a permanent schism in Christendom. In April 1523, Hadrian VI tired to impose another universal truce and peace in Europe, for three years, "supported by the heaviest ecclesiastical penalties" (Russell 1986: 34). But this met with considerable hostility, especially from France, who viewed Hadrian as a puppet of Charles V, his initial sponsor, even though Hadrian never really did Charles' bidding.

To conclude, it is worth noting that Charles had a great opportunity to perhaps live up to the spirit of his imperial title after his amazing victory at Pavia in 1525, which secured his position for many years to come, and indeed there was talk of a new crusade to Istanbul. But, to the disgust of all Europe, instead his troops ended up perpetrating the gruesome sack of Rome itself, in 1527! Proof, if more was needed, of the very thin tissue of solidarity that bound Christendom together.

Summary

In all these vacillations, it is clear that there is no positive international law regulating behavior, or moderating and shaping conflict and violence. Nor does canon or divine law provide this service. Indeed the extant ordering logic of dynasticism actually fueled violence quite efficiently and made it predictable.

The papacy might have been a directorate-general for Europe, but was not. It had a huge and very effective bureaucracy and a giant network of representatives and was also relatively well-financed. But it had lost most of its moral authority centuries before, and was increasingly just a tool to be exploited by ambitious families in Italy and their trans-European allies.

Would things be different seventy years later, after the Reformation and its impacts? After decades of religious war?

Were the main events of international relations of the time the treatment of native peoples in the New World? No. Theirs was a world about to be swallowed and destroyed by European ambition.

B. Melancholy Interlude: The Impact of the Wars of Religion, 1522-1582

The Reformation

Did the Reformation bring any major changes to this picture? Might it have had a big impact by making marriage between Catholic and Protestant sovereigns awkward? Did it start to interfere with inheritance of territories? The first religious wars in this period would be entirely novel, since they were not driven by dynastic claims and could not be solved by them. Instead, they had to be solved by killing, conquest, or ideological developments and legal developments.

The Reformation really did aid in the breakdown of (weak) universalist inclinations and facilitate "containerization," but in ways that were, especially at first, very much to the aid of dynasticism and *raison de famille*.

Discursive Developments
What were the new intellectual developments, in the four sets of contending discourses?

This brings us to speak briefly of Jean Bodin (1530-1596), Francisco Suarez (1548-1617), Alberico Gentili (1552-1608)

1559 was a turning point, as the Hapsburg-Valois struggle was resolved in the favor of the former and France descended into civil war. Spain thereafter dominated Italy and Milan became the new base for Spain to fight the war in the Netherlands in the 1560s, as the Hapsburgs ran Italian affairs, except for Venice. A new skeptical, Tacitist ideology began to unfold there, under the new Spanish-backed authoritarians (Tuck 1993). Refugees from the Spanish went mostly to France and the rule of Henri III, whose mother was Catherine de Medici. Europe came closer to positive international law as a result of developments in intra-polity (domestic?) politics. Tuck characterizes the entire period (1993: xii-xiv). Doctrines endorsing absolutism and *raison d'etat* arose in Europe in response to Spanish authoritarianism and the chaos of religious civil wars in places like France and the Spanish Netherlands. This thread began among Italian exiles in Paris, watching the French civil war after 1572 (Tuck 1993: 40-41).

Huguenots were happy to endorse absolutism when Henry III was being nice to them; but not after 1572 and St. Bartholomew's Massacre; then French Protestants were more vocally contributing to arguments about a right of resistance against bad kings or kings that acted against the word of God. A response came from Jean Bodin (1529-86) and his arguments in *De Republica* (or *Six livres de la republique*) of 1576 was designed to bolster the French monarchy against both radical Catholic and Protestant threats and was a big step forward in declaring the absolutist powers of princes (Tuck 1993). Assertions of sovereign powers for monarchs were upsetting to canonists. Sovereigntists also found themselves contending with natural law philosophers. (There were always contending schools, but it is the schools which change.)

An amazing era of *raison d'etat* arguments ensued in the 1580-1620 period. Lipsius and Montaigne were the principal followers of this trend in the 1580s. The arguments were "explicitly anti-constitutional (and often anti-ethical)." In this environment, skepticism, Stoicism, and *raison d'etat* went together. This conjuncture was then followed by Grotius, Hobbes and Locke, who do not use the language of *raison d'etat* and skepticism, but switch back to thirteenth-century natural law arguments.

What was happening was the very slow development of national and international legal doctrines – not that these were suddenly directing political behavior – throughout the sixteenth century. Lesaffer describes this well, looking at the long-term process of "the scientification and the autonomization of the law of nations" (2002: 225). This may have leapt ahead with publication of Grotius' De jure belli ac pacis in 1625, but began earlier in the sixteenth century as a result of that century's religious wars and "the internal destabilization of different regimes which they caused." These calamities concurrently brought an autonomization of public law and political theory as well.

Addition: Development of International Law for the Extra-European, 1518-1572
Beyond the problem of division in European society, the other stimulus of developments in international legal doctrine was addition of new peoples and territories to worry about, after

1492 and then especially the Spanish conquests of Mexico (1521) and Peru (1532). Canon law and papal powers were more in evidence here because their rulings on such issues were compatible with dynastic interests, and especially Charles V and Castille's control of the New World.

Here the work of Vitoria (1486-1546) is important. Vitoria endeavored to push aside divine law, which was being used to justify colonial conquest, and assert natural law instead, which held that the native peoples could be said to be the legitimate owners of their property (Anghie 2005: 13-22). What also emerges as crucial is Vitoria's contribution to the doctrine of sovereignty and the rights of sovereigns, paramount of which is the right to wage war. But Vitoria ends up endorsing, under the purview of natural law, the things he dismissed under religious law, like proselytizing, conversion, and war if conversion is resisted (2005: 23). So in the end he can be interpreted as providing clever justifications for colonialism.

Yes, in retrospect, these are significant turning points. As Cavallar argues (2002: 77), the Spanish Second Thomists made a "revolutionary contribution" to what was still an "emerging theory" of international law, in two ways: "first, their doctrine of human rights, and second, the willingness to apply standards of impartial justice universally, including the native Americans." But unfortunately, these developments would have real impacts only centuries later. Nor was the fate of native Americans international order's most crucial issue at the time. Instead, what any examination would find to be of daily and primary concern throughout Europe is the overwhelming power of the Hapsburgs and their looming hegemony over the entire continent.

Vieira (2003) on the law of the sea; an interesting debate, with natural law arguments for why the sea could not be owned – Vazquez and Grotius. The law of the sea becomes a more important issue. English privateering is a serious problem, for several decades after 1560 or so.

Gregory XIII (1572-1585)
- the Problem of England – was there anything that interdiction could do?
- the popes were forced to rely on Philip II

C. The Spanish Threat and the English Problem: Contending Sources of Order, 1582-1589

Later in the century, we arrive at a new set of problems long after the Reformation.
We can assess our contending sources of order again, near century's end, by looking at the way Europe dealt with the Spanish threat and the English problem.

England's relative disconnection from Europe was the result of her Protestantism, certainly, but also quite significant is Elizabeth's refusal to marry. Together, the two produced England's "offshore balancer" identity in this period. Certainly the impacts of an inter-dynastic marriage (to a French, Spanish, or German family, for example) would have been revolutionary in entangling England in continental competitions.

Francois of Alencon also titled as the Duke of Anjou, was King Henri III's younger brother and chosen successor, until he died in May 1584. He was Henri's designated successor because Henri himself was unlikely to have any children. Francois' death triggered a whirlwind of

power plays and jockeying for position. The two brothers were the last of the Valois dynasty, and the end of dynasties always brought great tumult in Europe.

The pope at the key juncture was Sixtus V (1585-1590). He allied with Phillip II to try and get rid of Elizabeth, helping pay for the Armada, for example.
- had terrible relations with Henry IV
- a stern Church reformer who enforced a lot of the strictures of the Council of Trent
- how useful was interdict and excommunication at this point?

Throughout this period, Elizabeth had a Catholic pretender to the throne in prison: Mary, Queen of Scots.

It is in 1587, finally, that the execution of Mary Queen of Scots provides the trigger for action by Philip II.

And Philip interpreted the conflict in terms of his own dynastic territorial gain

Summary:
With the rise of absolutism, we find no change in the explanatory power of dynasticism. The laws of the new sovereignty were still much weaker than dynasticism, and mostly made it easier for dynasticism to function. Papal powers still operated about as well as before, but only in the Catholic areas where they still had spiritual purview.

IV. Conclusions

Bull does a good job, and his account of the transitional "early internationalists" is among the best within the English School (more accurate than Jackson 2000, for example). If we are looking for the origins of what is *today* international law then yes, Bull and the English School enquiry is on the right track. But the disjunctures between now and the world of 1518 or 1588 are very great, and retrospective, origin-tracing analysis does great disservice to the world of that time. International law emerges as Bull describes it, but it is so inconsequential to providing any kind of order, predictability or regulation of international behavior that it barely warrants our attention.

Canon law is also not worthy of our attention, and it did not reign supreme in Europe before 1600 or before 1500. It is not even clear that it was much of a source of domestic order in this period, but that is beyond the scope of this paper. And it was not canon law and Christendom which needed to be slain so that international law could take off, but dynasticism and the powers and whims of princes and kings. This is the defeat of *raison de famille* by a true *raison d'etat*, and that is more of a domestic regime change – the development of popular checks on royal power – than an international-system event. Osiander (2001) is quite apt in his observation that Europe was divided by nationalism and countries were cut out of a solid society and community; then the real problems began.

Even several decades after the cases studies in this paper, little had changed. For example, much of Europe's international relations after 1661 was about the problematic Hapsburg/Spanish succession and fights over the spoils of the Spanish empire (Sturdy 2002). Bull might have given the juncture of 1789 more weight in *The Anarchical Society*, and

perhaps had a chapter on dynasticism. It was, after all, the central institution for an entire period of history.

It appears that there were three groupings of "rules" (in Bull's terms) or rule-projects in contention in the period 1500-1700: those of "Christendom" and its myth, those of dynasticism and *raison de famille*, and those of a nascent positive international law. But for all of this period only one of these held sway. It is not canon law and Christian unity that must be slain and supplanted by positive international law, but dynasticism – for the English School, the real target is absent from the scene. Dynasticism was powerful; it had the mechanisms for constructing a variety of actors, from major power to hegemon to balancer. It is too bad that Bull and the ES did not clue into the importance of dynasticism as the primary provider of order and logic to politics in this era. Dynasticism is an institution of (European) international society that didn't endure up to the 1970s, so perhaps that is why it is neglected and forgotten. But the ES is so sensitive to historical change, it is too bad that it missed this one – a key set of institutions of international society, for a certain very sizeable period of time.

One might concede that international law didn't govern much of political behavior in the sixteenth and seventeenth centuries, but conclude that this is fine, because international law even today is not particularly powerful in many instances, and, further, that we can still certainly learn from studying it. The problem with this characterization is that dynasticism was not "anarchy," needing to be tamed by international law - in highly stylized and popular terms, perhaps the IR problem of the last century. Instead, dynasticism was a lot of active rules, roles, accepted practices, a coherent logic of action, etc. – it took care of business and thus endured for centuries. It is left out of analyses at great peril.

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