

*The Emergence of Sovereign Practices:  
England's Break from Rome & the Henrician Revolution*

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## *The Emergence of Sovereign Practices: England's Break from Rome & the Henrician Revolution*

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Sovereignty in International Relations (IR) is generally taken to be the constitutive pillar of the discipline. To be sure, the principle of sovereignty itself is what makes the traditional ontology of IR – the state and the state system – possible, by allowing us to distinguish a sphere of authority “inside” of the state, characterized by a unified hierarchical authority constellation, from the sphere “outside” the state, characterized by its horizontal authority structure, anarchy. However, while sovereignty today is one of the key institutions of the society of states, and one of the main principles of international law, recognized and confirmed in the Charter of the United Nations, the discipline of IR has remained conspicuously silent about its origins and emergence in early modern Europe. As IR has held on to the myth of the 1648 origin of the state, the system of states, and the principle of sovereignty, the emergence of sovereign political authority has generally been taken for granted, and its relation to the emergence of the modern state has largely been left unexplored.<sup>1</sup> As sovereignty is

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<sup>1</sup> While the IR orthodoxy has tended to assume the stable and fixed character of state sovereignty, this understanding blurs the historicity of the concept, as well as rendering any historical investigation of its historical emergence logically impossible. See Cynthia Weber (1995), *Simulating Sovereignty. Intervention,*

understood to be constitutive of the modern state, the emergence of the state itself must logically follow the emergence of the principle of sovereignty as an organizing principle for the state system.

In the present paper, however, I argue that the temporal distinction between the state and sovereignty does not hold up to historical scrutiny. Rather, sovereignty and the state are mutually constitutive, and it is only through an understanding of the state and sovereignty as social constructs, and an historical investigation into their emergence and practice that one can trace their emergence in Europe at the break of the *respublica Christiana*. Furthermore, such an understanding can tell us about the nature of the early modern European polities. Many authors (most notably Quentin Skinner) have argued that the emergence of the modern state *proper* cannot be traced to earlier developments than the seventeenth century, as it is only then that the term enters into linguistic practice. Other authors (such as Joseph Strayer) claim on the other hand that the polities which emerged in the aftermath of the Middle Ages had a distinctly ‘stately’ character. In the present paper, I argue that it only through understanding sovereignty as a discursive *practice* of continuously *framing* the boundaries of political authority, and studying it as such can one understand the nature of the early modern polity.

The initial articulation of sovereignty was through the separation of the state’s particularistic claims to authority from that of the universalistic church. This framing of the internal and external limits of political authority, I argue, was not undertaken as a matter of juridical principle only. Rather, sovereignty as seen by the state was closely intertwined with a pre-existing cultural and religious framework, which influenced and limited the discourses available to the state. Sovereignty was thus initially conceived not as a new principle that spatialized or territorialized the limits of political authority, but by grounding these limits in pre-existing notions of the limits of authority.

In the present article, I argue that rather than understanding the emergence of sovereignty as a distinct principle underlying a spatialized territorial conception and legitimation of international politics, the meaning of sovereignty must be understood as contingent upon a set of historical practices, and their rearticulation over time. Transgressing the boundary traditionally set by 1648, in the present analysis of the

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*the State and Symbolic Exchange* (Cambridge: Cambridge University Press), p. 3., and Walker, *Inside/Outside: International Relations as Political Theory*.

discourse of sovereignty in the break-up between England and the Pope in the 1530s, I argue that the sovereign authority of the state cannot be understood as something exogenously given, something prior to the exercise of state power. Rather, it must be conceived of as constituted through the discursive practice of this authority. In order to understand the social construction of sovereignty, we must understand the *practices from which it emerges*, how these discourses influenced historical actors, and how in turn these actors made use of this discourse for their own ends. As such, the paper addresses the gap between the perhaps overly idealist accounts of Constructivist IR and the more materialist accounts of Historical Sociologists by focusing on the interaction between political actors *and* their meaning-world, and how these actors made use of pre-existing discourses of sovereignty in order to achieve their means.

The current paper examines England's initial break from Rome in the 1530s, and the practices through which territorial sovereignty was legitimized. After reviewing traditional understandings of sovereignty in the IR literature, I make the case for an understanding of sovereignty as socially constructed – sovereignty as a discursive practice. As such an understanding uncovers how the state could and had to make use of pre-existing discourses and terminologies in order to legitimize sovereign authority, it allows us to understand both continuities and crises in the articulation of the boundaries of political authority, as it allows us to understand the connections between new concepts of political authority and their ancestors. For, while some authors have argued that the fragmentation of the unity of Christendom represented an entirely novel way of conceiving of political authority in terms of modern sovereignty – a 'revolution'<sup>2</sup> so to speak – I argue in the present article that, although the understanding of the sovereign state which emerged at the time was qualitatively different from the medieval or feudal conception of political authority and rule, it was still firmly grounded in pre-existing conceptions of political authority. For, as Roberto Unger argues, to construct a new discourse, 'one must enter into the methods and conceptions of the classical system and still confer on them, in the course of the argument, meanings they previously lacked. In this way, one language slowly becomes another.'<sup>3</sup> Barry Barnes also holds that since practices in themselves do not contain

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<sup>2</sup> See Daniel Philpott (2001), *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press).

<sup>3</sup> Roberto Mangabeira Unger (1984), *Knowledge and Politics* (New York: The Free Press), p. 12.

rules for their use: ‘it is always necessary to ask what disposes people to enact the practices they do, how and when they do; and their aims, their lived experience and their inherited knowledge will surely figure amongst the factors of interest here.’<sup>4</sup> As Iver Neumann argues, ‘[p]ractices are nested phenomena.’<sup>5</sup> Consequently, any new conception of political authority – in this case state sovereignty – must rely on the pre-existing discursive structure of political authority. Taking state sovereignty as a given in international politics means ignoring important aspects of sovereignty – namely, how it relates to other discourses and conceptions of political authority, and the ways in which these relate to each other.

The benefit of this type of analysis, I argue, is that rather than taking the meaning of related concepts such as sovereignty, state and nation for granted and given, their intrinsically problematic and socially constructed nature, as well as their relationship is uncovered and problematised. The process of legitimizing sovereignty and inscribing the boundaries of a sovereign polity were constitutive of the distinction between inside/outside, as well as of the identity of state and nation. Based on the present analysis of the English Statutes concerned with the limits of political authority, I suggest that the break with Rome in the 1530s was crucial to the articulation of a specific type of spatialized boundary of political authority, namely one conceptually close to what is understood as sovereignty today.

## Sovereignty in International Relations Theory

The first attempt at defining ‘sovereignty’ is generally attributed to Jean Bodin,<sup>6</sup> who in his *Six Livres de la République* defined sovereignty as ‘the absolute and perpetual power of a commonwealth,’ or (in the Latin version) as ‘supreme and absolute power over citizens and subjects.’<sup>7</sup> Furthermore, he claimed, ‘the main point of sovereign majesty and absolute power consists of giving the law to subjects in general without their consent.’<sup>8</sup> Bodin argued in 1576 that it was necessary to define sovereignty

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<sup>4</sup> Barnes, ‘Practice as Collective Action,’ p. 22.

<sup>5</sup> Neumann, ‘Returning Practice to the Linguistic Turn: The Case of Diplomacy,’ p. 629.

<sup>6</sup> Knutsen, *A History of International Relations Theory*, p. 73.

<sup>7</sup> Jean Bodin (1992), *On Sovereignty*, edited by Julian H. Franklin (Cambridge: Cambridge University Press), p. 1.

<sup>8</sup> Op. cit., p. 23.

‘because no jurist or political philosopher has defined it, even though it is the chief point, and the one that needs most to be explained, in a treatise on commonwealth.’<sup>9</sup> Bodin’s definition, we note, is first and foremost concerned with domestic sovereignty; ‘external’ sovereignty in the sense of there being no authority above sovereigns is deducible from domestic absolute power.<sup>10</sup> The Bodinian roots of the concept of sovereignty are still apparent today, as Cynthia Weber argues with reference to the common understanding of sovereignty in IR theory which is taken to mean ‘the absolute authority a state holds over a territory and people as well as independence internationally and recognition by other sovereign states as sovereign state.’<sup>11</sup>

Classical Realists such as Morgenthau have seen sovereignty as the reason behind the anarchical character of the international system. To be sure, Morgenthau defined sovereignty as ‘a centralized power that exercised its lawmaking and law-enforcing authority within a certain territory.’<sup>12</sup> This territorialization of political authority is, according to Morgenthau, the reason behind the ‘decentralization, weakness and ineffectiveness’ of supra-national institutions.<sup>13</sup> But while Morgenthau assumed the continuity of the doctrine of sovereignty from the end of the sixteenth century to contemporary international politics, other Realists such as E.H. Carr have held that one should not assume the immanent character of sovereignty, as few concepts remain unchanged. Thus, he argued, while sovereignty had always been a contested principle which emerged at the break-up of the *respublica Christiana*, it was ‘likely to become in the future even more blurred and indistinct than it is at present.’<sup>14</sup> Neo-realists, on the other hand, tend to underplay the contested character of sovereignty. Assuming the congruence between territory, population and authority into the sovereign state as the central actor in international politics, Kenneth Waltz derives his (descriptive) understanding of the sovereign state from the anarchical state

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<sup>9</sup> Op. cit., p. 1.

<sup>10</sup> While Bodin’s *Six Livres de la République* were the first philosophical statement on sovereignty, Bodin was nevertheless no legal innovator. As I argue in the present work, rather than being a conceptual innovation, Bodin’s conceptual statement of sovereignty, albeit the first one of its kind in Europe, is best understood as an organized statement of the changes which had taken place.

<sup>11</sup> Weber, *Simulating Sovereignty. Intervention, the State and Symbolic Exchange*, p. 1.

<sup>12</sup> Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, p. 299.

<sup>13</sup> Op. cit., p. 300. See also Michael C. Williams (2004), ‘Why Ideas Matter in International Relations: Hans Morgenthau, Classical Realism, and the Moral Construction of Power Politics,’ *International Organization* vol. 58, no. 4.

<sup>14</sup> Edward Hallett Carr (1964), *The Twenty Years Crisis, 1919-1939* (New York: Harper and Row), pp. 229-30.

system: 'To say that the state is sovereign means that it decides for itself how it will cope with its internal and external problems.'<sup>15</sup> Neo-realists, however, do not provide a conclusive account of the emergence of the concept of sovereignty, nor do they acknowledge its historically contingent character.<sup>16</sup> Nor have Neo-liberal scholars provided any convincing definitions of sovereignty, as their project has concentrated more on criticizing the state-centrism of the Neo-realist project, focusing instead on the 'erosion' of state sovereignty.<sup>17</sup>

At the conceptual level, scholars have also paid scant attention to the constructed and contested character of sovereignty. F.H. Hinsley, for instance, argues: 'at the beginning, at any rate, the idea of sovereignty was the idea that there is a final and absolute political authority in the political community; and everything that needs to be added to complete the definition is added if this statement is continued in the following words: 'and no final authority exists elsewhere'.<sup>18</sup>

Sovereignty is thus seen as a principle for domestic authority. The creation of the inside/outside divide which results from it is a consequence of the final authority the state enjoys over a given territory, as competing authorities would be logically impossible. As Poggi argues, 'the state's sovereignty and its territoriality, jointly produce a most significant consequence: the political environment in which each state exists is by necessity one which it shares with a plurality of states similar in nature to itself.'<sup>19</sup>

Sovereignty therefore is generally understood as the constitutive pillar of international politics, as it is the principle which renders international politics logically possible. While defining the formal autonomy of the state as the basic unitary actor, it also demarcates the spatiality of the units which constitute the system. Thus, while conceptually creating the main units of international politics (the inside), it also produces the international environment (the outside).

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<sup>15</sup> Kenneth Waltz (1979), *Theory of International Politics* (New York: McGraw-Hill), p. 96.

<sup>16</sup> See Biersteker and Weber, 'The Social Construction of State Sovereignty,' p. 6. See also J. Samuel Barkin and Bruce Cronin (1994), 'The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations,' *International Organization* vol. 48, no. 1., Robert Jackson (1999), 'Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape,' *Political Studies* vol. 47, no. Special Issue: Sovereignty at the Millennium., and Robert Jackson (1999), 'Introduction: Sovereignty at the Millennium,' *Political Studies* vol. 47, no. Special Issue: Sovereignty at the Millennium.

<sup>17</sup> Biersteker and Weber, 'The Social Construction of State Sovereignty,' p. 7.

<sup>18</sup> F. H. Hinsley (1986), *Sovereignty*, 2nd ed. (Cambridge: Cambridge University Press), pp. 25-26.

<sup>19</sup> Poggi, *The State: Its Nature, Development and Prospects*, p. 23.

The concept of sovereignty should therefore be understood as an integral part of neither the internal nor the external sphere of politics. Rather, it is what makes the distinction between the two spheres of politics possible. Thus, sovereignty is best conceptualized, as Bartelson argues, as a frame or *parergon* which ‘cannot be a member of either class. It is neither inside, nor outside, yet it is the condition of possibility of both. [T]here is a ceaseless activity of *framing*, but the frame itself is never present, since it is itself unframed.’<sup>20</sup> As argued in the introduction, in order to understand the limits of political authority in early modern Europe, the locus of the investigation must be this ceaseless activity of framing. Sovereignty cannot be given an *a priori* meaning; a meaning outside of the context of its articulation. The ways through which sovereignty frames can thus tell us something about the nature of the polities which developed in the mid-1500s.

However, as Bartelson himself notes, in acknowledging the constitutive function of sovereignty for both internal and external politics, and the continuous tension between the two, it is important to stress the social construction of the concept. In order to understand how practices and theories of sovereignty have been constructed, deconstructed and reconstructed over time, one must place an historical emphasis on these processes.<sup>21</sup> For, as R.B.J. Walker warns, ‘the very attempt to treat sovereignty as a matter of definition and legal principle encourages a certain amnesia about its historical and culturally specific character.’<sup>22</sup>

More recent treatments of the concept of sovereignty have emphasized the socially constructed character of sovereignty. As Biersteker and Weber argue, ‘neither state nor sovereignty should be assumed or taken as given, fixed, or immutable.’ Rather, they argue, in order to understand the socially constructed character of sovereignty, one ought to ‘make an effort to separate state and sovereignty’ and consider ‘the constitutive relationship between state and sovereignty; the ways the meaning of sovereignty is negotiated out of interactions within intersubjectively

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<sup>20</sup> Jens Bartelson (1995), *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press), p. 51. See also Harry D. Gould and Nicholas Onuf (1997), ‘An Archeology of Sovereignty,’ review of Jens Bartelson, *A Genealogy of Sovereignty*, *Mershon International Studies Review* vol. 41.

<sup>21</sup> Biersteker and Weber, ‘The Social Construction of State Sovereignty,’ p. 4.

<sup>22</sup> Walker, *Inside/Outside: International Relations as Political Theory*, p. 166.

identifiable communities; and the varieties of ways in which practices construct, reproduce, reconstruct, and deconstruct sovereignty.’<sup>23</sup>

One of the main components of sovereignty is recognition by other actors, a component which is largely socially constructed. As Biersteker and Weber argue, ‘Precisely what a state has to do to gain sovereign recognition is something that has yet to be specified,’ and the meaning of sovereignty, being socially constructed, changes along with changes in the prescriptions for sovereign recognition. Thus, in order to understand the meaning of state and sovereignty and the relationship between them, one needs to understand ‘the ways that authority claims are demarcated.’<sup>24</sup> Following Biersteker and Weber’s argument, state sovereignty being inherently socially constructed, ‘The modern state system is not based on some timeless principle of sovereignty, but on the production of a normative conception that links authority, territory, population (society, nation), and recognition in a unique way and in a particular place (the state).’<sup>25</sup>

Thus the sovereign state cannot be taken as ontologically given, because it leads to a ‘blindness’ to the historicity of concepts such as sovereignty. As Cynthia Weber points out, ‘It is not possible to talk about the state as an ontological being – as a political identity – without engaging in the political practice of constituting the state. [T]o speak of the sovereign state at all requires one to engage in the political practice of stabilizing this concept’s meaning.’ Thus, rather than marking the ‘location of the foundational entity of international relations theory,’ sovereignty marks a ‘*site of political struggle*[,]the *struggle to fix the meaning of sovereignty in such a way as to constitute a particular state* – to write the state – with *particular boundaries, competencies and legitimacies available to it.*’<sup>26</sup> As Weber argues, ‘This is not a one-time occurrence which fixes the meaning of sovereignty and statehood for all time in all places; rather, this struggle is repeated in various forms at numerous spatial and temporal locales.’<sup>27</sup>

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<sup>23</sup> Biersteker and Weber, ‘The Social Construction of State Sovereignty,’ pp. 11-12.

<sup>24</sup> Op. cit., pp. 12-14.

<sup>25</sup> Op. cit., p. 3.

<sup>26</sup> Weber, *Simulating Sovereignty. Intervention, the State and Symbolic Exchange*, pp. 2-3.

<sup>27</sup> Op. cit., p. 3. (emphases added)

## England's Initial Break with Rome

The rupture between the feudal structure of authority and that of the system of sovereign states was not discursively legitimized by the state towards other 'external' actors in terms of rupture or break, nor in normative terms. It was argued to be a continuity with the old order, in accordance with tradition.

When the Legatine Court<sup>28</sup> met in 1529 to consider Henry VIII's (1509-1547) divorce from Catherine of Aragon, there were few signs indicating that this marked the beginning of a wide-ranging political revolution (to use Elton's terminology), and the initiation of a thorough process of reformation.<sup>29</sup> Henry had always described himself as a Catholic, and was still the Pope's loyal 'defender of the faith.'<sup>30</sup> And, while many in England wished for a transformation of the Church,<sup>31</sup> nothing in the English Reformation points to the process being either Lutheran or Calvinist.<sup>32</sup>

The Henrician Reformation, however, while adopting the Lutheran understanding of the legitimate basis of obedience, remained quite conservative. And while Lutherans had hoped that the adoption of the doctrine of obedience would enable them to 'smuggle or march in further tranches of Lutheran doctrine'<sup>33</sup> the essence of the Henrician religion remained obedience.<sup>34</sup> As Rex argues, 'What is

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<sup>28</sup> The Pope had dispatched Cardinal Campeggio from Rome in the summer of 1528 to convene a court of legates in London to decide upon the annulment of Henry VIII's marriage.

<sup>29</sup> See G. R. Elton (1953), *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII* (Cambridge), and G. R. Elton (1991), *England under the Tudors* (London: Routledge). See also C. Coleman and D. Starkey, eds., (1986), *Revolution Reassessed: Revisions in the History of Tudor Government and Administration* (Oxford). For a discussion of Elton's position, and a partial rebuttal of his understanding of the Tudor 'revolution,' see Williams, 'The Tudor State,' and Penry Williams (1979), *The Tudor Regime* (Oxford: Oxford University Press).

<sup>30</sup> Peter Marshall (2003), *Reformation England 1480-1642* (London: Arnold), pp. 26-27. See also Richard Rex (1989), 'The English Campaign against Luther in the 1520's,' *Transactions of the Royal Historical Society* vol. 6.

<sup>31</sup> See William A. Clebsch (1980), *England's Earliest Protestants, 1520-35* (London: Greenwood Press), A. G. Dickens (1997), 'The Early Expansion of Protestantism in England, 1520-1558,' in *The Impact of the English Reformation 1500-1640*, ed. P. Marshall (London: Hodder Arnold).

<sup>32</sup> As Arthur Slavin argues, the historiography of the English Reformation has undergone various stages and changes. While A. F. Pollard, the dominant Tudor historian after World War I, saw the Henrician Reformation as a mainly progressive and Protestant movement aimed at uprooting medieval forms of authority, J. E. Neale, one of Pollard's students, later placed the centre of gravity upon the reign of Elizabeth I. Finally, Geoffrey Elton, a student of Neale's, re-located the focus on the Henrician Reformation, although without Pollard's progressive understanding of Protestantism. See Arthur J. Slavin (1990), 'G. R. Elton: On Reformation and Revolution,' *The History Teacher* vol. 23, no. 4, pp. 406-08.

<sup>33</sup> Op. cit., p. 884.

<sup>34</sup> See R. L. Greaves (1982), 'Concepts of Political Obedience in Late Tudor England: Conflicting Perspectives,' *Journal of British Studies* vol. 22.

distinctive about the Henrician church-state is that obedience *was* its primary claim.<sup>35</sup> As a case in point, Henry VIII himself argued that the reason why in the 1530s an English Bible had been required to be placed in every church, was so that ‘every of the king’s majesty minding to read therein, might be occasion thereof not only consider and perceive the great and ineffable omnipotent power, promise, justice, mercy, and goodness of Almighty God, but also to learn thereby to observe God’s commandments, and to obey their sovereign lord and high powers, and to exercise godly charity.’<sup>36</sup>

While Henry’s request for an annulment of his marriage may have seemed reasonable initially, as his case was grounded in scripture (Catherine had briefly been married to Arthur, Henry’s elder brother), various circumstances having to do with the victory of Charles V (Catherine’s nephew) over Francis I in Italy eventually led Pope Clement VII to revoke the divorce proceedings from England to Rome, thus ending Henry’s hopes for a successful settlement.<sup>37</sup> As Marshall argues, ‘Henry’s Royal Supremacy, it is fair to say, was in great measure the product of his failure to secure the divorce in any other way.’<sup>38</sup>

The annulment proceedings were initiated by the nomination of a committee of central members of the clergy (Cranmer, Foxe, Edward Lee and Nicholas de Burgo) who produced the *Collectanea satis copiosa* (the ‘sufficiently big collection’) which aimed at demonstrating that English kings had ‘enjoyed spiritual supremacy in their dominions’ since Anglo-Saxon times.<sup>39</sup> As a consequence of this, the document argued, the annulment of Henry’s marriage could be done by an English bishop.<sup>40</sup> Between 1531 and 1534, several statutes were enacted which limited the powers of the clergy, culminating in the Act in Restraint of Appeals<sup>41</sup> which finally rejected papal authority, and the Supremacy Act<sup>42</sup> which confirmed Henry’s new title.<sup>43</sup> Henry was

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<sup>35</sup> Rex, ‘The Crisis of Obedience: God’s Word and Henry’s Reformation,’ p. 894. (emphasis original)

<sup>36</sup> Quoted in *Op. cit.*, p. 893.

<sup>37</sup> Marshall, *Reformation England 1480-1642*, pp. 36-37.

<sup>38</sup> *Op. cit.*, p. 37.

<sup>39</sup> *Op. cit.*, pp. 38-39.

<sup>40</sup>; *Op. cit.*, p. 38. See also Virginia Murphy (1995), ‘The Literature and Propaganda of Henry VIII,’ in *The Reign of Henry VIII*, ed. Diarmaid MacCulloch (London: St. Martin’s Press), pp. 146-48.

<sup>41</sup> 1533 (24 Henry VIII, c. 12), ‘Act in Restraint of Appeals [an Act That the Appeals in Such Cases as Have Been Used to Be Pursued to the See of Rome Shall Not Be from Henceforth Had nor Used but within This Realm],’ in *SECH*.

<sup>42</sup> 1534 (26 Henry VIII, c. 1), ‘The Supremacy Act [an Act Concerning the King’s Highness to Be Supreme Head of the Church of England and to Have Authority to Reform and Redress All Errors, Heresies and Abuses in the Same],’ in *SR III*.

thus able to ‘control all aspects of the Church’s administration, and to define its doctrine.’<sup>44</sup>

## This Realm of England is an Empire, and so hath been accepted in the World

The initial break from the authority of Rome was achieved juridically and discursively along two lines, namely the *recognition* of sovereign authority by other polities, and the *exclusive* character of sovereignty. As to the fact that this was recognized by other actors, the statute claimed that its understanding of the prerogatives of sovereign authority was grounded in tradition *tradition*, by appealing to a legal right enjoyed by the English kings since 1351; Consequently, once the claim to exclusive jurisdiction was made, the status of the polity had to be established. The exclusive character of sovereign authority was legitimized through appropriating the existing discourse on political authority, equating the kingdom of England with the Empire. For, placing a polity on the level with the *Imperium*, implied a claim that the polity had no external *Superior* (*‘universitas superiorem non recognoscens’*).<sup>45</sup> As John Richardson argues, based on the existing English law statutes of *Praemunire* of 1352 and 1393, Henry had to limit the authority and jurisdiction of foreign princes in England.<sup>46</sup> The original statutes had been passed in order to prevent the pope from appointing non-resident foreigners to positions within the English church, and deeming it treasonable to appeal the decisions of the king of England to Rome.<sup>47</sup> Furthermore, the Henrician break with

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<sup>43</sup> See also S. Lehmborg (1970), *The Reformation Parliament, 1529-1536* (Cambridge: Cambridge University Press).

<sup>44</sup> Marshall, *Reformation England 1480-1642*, p. 39.

<sup>45</sup> See Gierke, *Political Theories of the Middle Age*, p. 97.

<sup>46</sup> The legislation on *Praemunire* was very much based on Richard II’s Second Statute on *Praemunire* of 1393, which stated that ‘if any one purchases or pursues, or causes to be purchased or pursued, in the court of Rome or elsewhere, any such translations, processes, sentences of excommunication, bulls, instruments, or anything else touching our lord the king that is inimical to him, his crown, his regality, or his aforesaid kingdom, [...] such persons [...] are to be put outside the protection of our said lord the king, and their lands, tenements, goods, and chattels are to be forfeit to our lord the king. And [it is ordained] that, if they can be found, they are to be bodily attached and taken before the king and his council, there to respond in the cases aforesaid; or that process shall be brought against them by *praemunire facias* in the manner provided by other statutes concerning provisors and other men who, in derogation of our lord the king’s regality, bring suit in the court of another.’ 1536 (28 Henry VIII, c. 10), ‘An Act Extinguishing the Authority of the Bishop of Rome,’ in *SECH*, p. 246.

<sup>47</sup> See John Richardson (2002), ‘No King but Caesar? The Headship of the Church in Anglican Theology,’ *Churchman* vol. 116, no. 4.

Rome had to establish the political status of England not merely as a kingdom, but as an *Empire* in its own right.<sup>48</sup>

While the modern concept of ‘sovereignty’ can be traced back to Jean Bodin’s *Six Books on the Commonwealth*,<sup>49</sup> it is nevertheless clear that what was sought achieved with the *Act in Restraint of Appeals* in 1533, was in clear understanding with what was subsequently labelled ‘sovereignty.’ Thus, while the Act in Restraint of Appeals must be understood first and foremost with respect to the challenge it sought to pose to the authority of Rome, its language was firmly grounded in a modern understanding of sovereignty, in the sense of the head of state being the sole and supreme authority within the political community: ‘Where, by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed that this realm of England is an empire, and *so hath been accepted in the world, governed by one supreme head and king* having the dignity and royal estate of the imperial crown of the same, unto whom a body politic [...] be bounden and owe to bear next to God a natural and humble obedience [...]’<sup>50</sup> Furthermore, the statute made a clear distinction between the ‘internal’ and ‘external’ spheres of authority, emphasizing on the exclusive prerogative of the sovereign within the territory of the realm: ‘[W]hereas the king [...] made sundry ordinances, laws, statutes, and [...] to keep [this realm] from the annoyance as well of the see of Rome as from the authority of other foreign potentates attempting the diminution or violation thereof [...]’<sup>51</sup>

The Act furthermore firmly established the sovereignty of the state (‘the king’s jurisdiction’) as the final authority within the realm: ‘[T]he king’s highness, his nobles, and commons [...] enact, establish, and ordain that all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations, and obventions [...] shall be from henceforth heard [...] and *definitively adjudged and determined within the king’s jurisdiction and authority and not elsewhere.*’<sup>52</sup> Any violation of the newly established

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<sup>48</sup> Op. cit., pp. 307-08.

<sup>49</sup> See Bodin, *On Sovereignty*.

<sup>50</sup> 1533, ‘Act in Restraint of Appeals [an Act That the Appeals in Such Cases as Have Been Used to Be Pursued to the See of Rome Shall Not Be from Henceforth Had nor Used but within This Realm],’ p. 304. (emphasis added)

<sup>51</sup> 1533, ‘Act in Restraint of Appeals [an Act That the Appeals in Such Cases as Have Been Used to Be Pursued to the See of Rome Shall Not Be from Henceforth Had nor Used but within This Realm],’ p. 304. (emphasis added)

<sup>52</sup> Ibid. (emphasis added)

principle of sovereignty<sup>53</sup> was declared *praemunire*.<sup>54</sup> Finally, the Act not clear the juridical implications of its intended understanding of sovereignty, as it declared that ‘any of the king’s subjects or residents [...] shall from henceforth take, have, and use their appeals within this realm and not elsewhere.’<sup>55</sup>

Thus, on the one hand the discourse around the separation from Rome leaves no doubt as to the understanding of sovereignty as a *parergon*, or frame, as Jens Bartelson argues,<sup>56</sup> since it was argued that the ‘imperial’ status claimed by England ‘hath been accepted in the world, governed by one supreme head.’ There is a clear element of mutual recognition combined with final authority within the political community. However, more than solely being a matter of principle for territorial division of political authority, sovereignty was held to have a positive value for the public good, as it was argued that foreign powers were attempting ‘diminution or violation’ of the realm.

## The Uses of Tradition and the Rearticulation of Discourse

This ‘new’ understanding of the boundaries of political authority was articulated with reference to pre-existing notions of legitimate political authority and political loyalties. Such an understanding of political associations allows us to take into account the competition for people’s primary loyalty between the universalistic church and particularistic states. In order to understand this competition, I lean on Carl Schmitt’s understanding of political associations as competing for *primary* loyalty of their members on an equal level.<sup>57</sup>

As Roberto Unger argues, any construction of a new discourse must to some extent rely on pre-existing discourses, and ‘confer on them [...] meanings they

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<sup>53</sup> ‘if any person or persons [...] do attempt, move, purchase, or procure from or to the see of Rome, or from or to any other foreign court or courts out of this realm, any manner foreign process, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, or judgments, of what nature, kind, or quality soever they be [...]’ Ibid.

<sup>54</sup> ‘shall incur and run in the same pains, penalties, and forfeitures ordained and provided by the Statute of Provision and Praemunire made in the sixteenth year of the reign of [...] King Richard II.’ Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Bartelson argues that it is through the articulation of this frame that the distinction between ‘inside’ and ‘outside’ is made possible. However, while constituting both spheres as distinct from each other, the frame is nevertheless not part of either. See Bartelson, *A Genealogy of Sovereignty*, p. 51.

<sup>57</sup> Schmitt’s understanding relies on that of Gierke. See Gierke, *Political Theories of the Middle Age*.

previously lacked.’<sup>58</sup> On the one hand, an existing discourse was *reinterpreted* so as to fit the political motivations of the Crown; on the other hand, the emergence of geographically bounded sovereignty was linked to religious authority. The authority of Rome was found void and replaced by the authority of the Crown. As Carl Schmitt has argued, the changing nature of political associations must be understood within a context in which different principles of associations and actors compete for the loyalty of people.<sup>59</sup> The Act in Restraint of Appeals leaves little doubt as to the political aims the emerging state wished to achieve. It sought to convince not only the ‘outside’ (Rome and other rulers) of the legitimacy of the claims to sovereignty: it also sought to convince the people or subjects, the ‘inside,’ of the rightfulness and legitimacy of these claims. As Richard Rex argues, we may speak of a ‘transfer of the ecclesiastical loyalty of the English people from pope to king.’<sup>60</sup>

The legitimacy contests in which the state was involved in terms of establishing sovereign authority along territorial lines thus involved both an argument about the legitimacy of these claims vis-à-vis other rulers in terms of recognition and establishing the *outside* boundaries of political authority, and appeals to the state’s subjects in terms of the legitimacy and necessity of absolute authority *within* or *inside* these boundaries. Sovereignty, as Bartelson argues, must be understood as a *frame* which involves the creation of both the inside and the outside, as a framework which simultaneously constitutes both. Furthermore, one cannot understand the initial establishing of sovereignty without understanding the legitimacy contests in which the state was involved – towards other actors on what was to become the ‘outside,’ and other actors ‘inside’ the boundaries that were constituted.

Thus, while the 1534 *An Act for the exoneration from exactions paid to the See of Rome* confirmed the full independence of England from any foreign influence: ‘For where this your Grace’s Realm [...] has been and is free from subjection to any mans laws but only to such as have been devised, made and ordained within this Realm,’ it also posited that ‘the people of this your Realm [...] have bound themselves *by long use and*

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<sup>58</sup> Unger, *Knowledge and Politics*, p. 12.

<sup>59</sup> Carl Schmitt (1996), *The Concept of the Political*, trans. George Schwab (Chicago: The University of Chicago Press).

<sup>60</sup> Rex, ‘The Crisis of Obedience: God’s Word and Henry’s Reformation,’ p. 863.

*custom [...] not to the observance of the laws of any foreign Prince, Potentate or Prelate.*<sup>61</sup> Sovereignty, although an arrangement of political authority which broke from the pre-existing arrangement of political authority, is nevertheless argued to be in accordance with these earlier notions. The reconfiguration of political authority was argued to be consistent with the way political authority had been configured in the past. The discourse was thus pitched in a way which made use of the past for a reconfiguration of political authority in the present. As Elie Kedourie argues with respect to nationalism, the past was subverted in order to create the present.<sup>62</sup> Ernest Renan argues along the same lines when he claims that ‘forgetting’ and even ‘historical error’ are ‘crucial factor[s] in the creation of a nation.’<sup>63</sup> Just as is argued with respect to nationalism, a historical inquiry into the discursive origins of sovereignty can uncover the ways in which past discourses and constellations of authority are deconstructed, used and reconstructed in a way consistent with contemporary political purposes, with a new political order.

The element of tradition was thus crucial in the state’s initial claims to sovereign authority and the emphasis on the illegitimate character of the authority of Rome. The 1534 *Act for the establishment of the King’s Succession*<sup>64</sup> stipulated that past practices whereby the See of Rome had ‘presumed in times past to invest who should please them to inherit in other men’s kingdoms and dominions’ were ‘contrary to the great and inviolable grants of jurisdictions given by God immediately to emperors, kings and princes in succession to their heirs.’ Furthermore, further emphasizing the exclusive character of sovereign rule, the statute made it clear that foreign influence within the realm was detrimental to its well-being. This argument was a crucial one in legitimizing the break with Rome, as well as a clear distinction between inside/outside, between foreign and domestic: ‘And sometimes other foreign princes and potentates [...] *mind[ing] rather dissension and discord to continue in the realm to the utter desolation*

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<sup>61</sup> 1534 (25 Henry VIII, c. 21), ‘An Act for the Exoneration from Exactions Paid to the See of Rome,’ in *SR III*, p. 464. (emphasis added)

<sup>62</sup> Elie Kedourie (1993), *Nationalism* (Oxford: Blackwell), p. 70.

<sup>63</sup> Quoted in Marx, *Faith in Nation: Exclusionary Origins of Nationalism*, p. 29.

<sup>64</sup> The issue of succession to the throne had not been a serious dispute when Henry VIII came to the throne. At the time, Henry was already an adult, and just as he did not seem to have any serious doubts about his rightful claim to the throne, so was he also widely acclaimed when he ascended the throne. The issue of succession, however, came to be more pressing after his coronation, especially after the failure of his first marriage to provide male heirs to the throne. Henry’s divorce from Catherine of Aragon and the marriage to Ann Boleyn thus led to the first Act of Succession which declared Princess Mary illegitimate. Elton, *The Tudor Constitution*, p. 2.

*thereof [...]; the continuance and sufferance whereof [...] were too dangerous and perilous to be suffered any longer within this realm and too much contrary to the unity, peace and tranquillity of the same [...]*<sup>65</sup>

## Writing and Re-writing the Sovereign State

Throughout the years following the initial break with Rome, the limits of the political authority of England were the locus of incessant contests; these contests saw the limits of the authority of the polity written, codified, re-written, and re-codified. *An Act for Punishment of Heresy* of 1533<sup>66</sup> further limited the authority of the Holy See, in that ‘no manner of licence or authority [...] be hereafter obtained from the Bishop of Rome, otherwise called the Pope, to preach in any part of this Realm’ However, the act makes various specifications as to what ought to be understood as heresy. As the 1533 Act underscores, ‘where the great number of the King’s subjects having little or no learning nor knowledge of letters have been put in opinion that [...] every man that in any thing speaks or doth against the said pretended power of the [...] Bishop of Rome [...] stands in danger and is impeachable of heresy.’ The act thus declared that ‘no manner of speaking, doing, communicating, or holding against the said Bishop of Rome, or his pretended power or authority made or given by human laws or policies and not by holy scripture [...] shall be deemed, reputed, accepted or taken to be Heresy.’<sup>67</sup>

The 1534 *An Act for the exoneration from exactions paid to the See of Rome*<sup>68</sup> further exemplifies how sovereignty was established discursively with reference to *pre-existing* political concepts, as it stated that the King and his successors ‘have and ought to have an imperial power and authority in the same [of their own] and not obliged in any worldly causes to any other Superior.’<sup>69</sup> Illustrative of this claim was also the interdiction from suing the act to the ‘Court of Rome or the See of Rome,’ which was

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<sup>65</sup> 1534 (25 Henry VIII, c. 22), ‘An Act for the Establishment of the King’s Succession,’ in *ETC*, p. 7. (emphases added)

<sup>66</sup> 1533 (25 Henry VIII, c. 14), ‘An Act for Punishment of Heresy,’ in *SR III*.

<sup>67</sup> *Ibid.*

<sup>68</sup> 1534, ‘An Act for the Exoneration from Exactions Paid to the See of Rome.’

<sup>69</sup> *Ibid.*

liable to be punished as *praemunire*. The same penalty would incur for anyone making a ‘corporall oath to the Bishop of Rome otherwise called the Pope’<sup>70</sup>

As mentioned, the process of delimitating and regulating the boundaries of political authority did not entail any clear-cut break with old conceptions of political authority. It consisted of a lengthy process of increased regulation. Sovereignty was written by the state over a long period of time, and the new conception of sovereignty did not initially manifest itself as what is generally understood by the concept today. It also consisted of continuous legitimacy contests which from the state’s part were fought through increased legislation. As such, the 1534 *Act for the Submission of the Clergy and Restraint of Appeals*<sup>71</sup> stipulated: ‘Be it therefore now enacted [that the clergy] from henceforth shall presume to attempt, allege, claim, or put in ure any constitutions or ordinances [...] nor shall enact, promulge, or execute any such canons [...] unless the same clergy may have the king’s most royal assent and licence [...] upon pain [...] to suffer imprisonment and make fine at the king’s will.’<sup>72</sup> It made it also clear that ‘no manner of appeals shall be had, provoked, or made out of this realm [...] to the bishop of Rome.’<sup>73</sup>

Any person appealing to the Pope, the act stipulated, ‘shall incur and run into the dangers, pains and penalties contained and limited in the act of provision and praemunire.’<sup>74</sup> Much of the legislation surrounding the initial break with Rome consisted of delimitating the exact boundaries of political and religious authority. The king having become the supreme head of the church, appointments to clerical positions also had to be regulated. The 1534 *Act Concerning Ecclesiastical Appointments and Absolute Restraint of Annates*<sup>75</sup> was thus chiefly concerned with giving precise directions as to how ecclesiastical personnel were to be elected by the king. It also made it clear that any contact and financial transactions with the pope had to be ceased: ‘no person nor persons hereafter shall be presented, nominated, or commended to the said bishop of Rome, otherwise called the pope, or to the see of

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<sup>70</sup> Op. cit., p. 470.

<sup>71</sup> 1534 (25 Henry VIII, c. 19), ‘Act for the Submission of the Clergy and Restraint of Appeals,’ in *SECH*.

<sup>72</sup> Op. cit., p. 306.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid. See also 1393 (16 Richard II, c. 5), *Statute of Praemunire*.

<sup>75</sup> 1534 (25 Henry VIII, c. 20), ‘Act Concerning Ecclesiastical Appointments and Absolute Restraint of Annates,’ in *SECH*.

Rome.’ Furthermore, the Act adds that no none shall ‘send nor procure there for any manner of bulls, briefs, palls, or other things requisite for an archbishop or bishop, nor shall pay any sums of money for annates, first fruits, or otherwise.’<sup>76</sup> There are indications that the previous act, which also dealt with these issues, was insufficient in that it left room for interpretation. The new rules governing appointments were thus clarified and laid down as to follow the new authority of the king in ecclesiastical matters. The penalties for not conforming to the act were once again severe, as ‘then every [...] person [...] so offending [...] shall run into the dangers, pains, and penalties of the Statute of the Provision and Praemunire made in the twenty-fifth year of the reign of King Edward III and in the sixteenth year of King Richard II.’<sup>77</sup>

The break with Rome was finalised with the passing of the Supremacy Act [An Act concerning the King’s Highness to be Supreme Head of the Church of England and to have Authority to Reform and Redress All Errors, Heresies and Abuses in the Same]<sup>78</sup> In November of 1534, Henry’s grip and claim to control over the Church in England became statute. The Supremacy Act was passed, turning the Church in England to the Church of England, effectively starting a process of confessionalization, of not only the Church, but also the population. The title of the Supremacy Act already declared that, from now on, Henry was to ‘be supreme head of the Church of England and to have authority to reform and redress all errors, heresies, and abuses in the same.’

A central element in implementing a novel understanding of political authority was the ‘territorialization’ of political rule. Whereas feudal political authority had relied on personal ties between ruler and ruled, sovereign authority implied a territorial delimitation of political rule. Political authority had to become territorialized. And here again, as with most aspects of sovereign authority, every aspect was to become meticulously codified.

As noted, the codification of the limits of sovereign authority did not happen *ex nihilo*, nor was it a one-time event. This writing of the boundaries of sovereign authority was a constant and repeated process – a process which by definition cannot

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<sup>76</sup> Op. cit., p. 307.

<sup>77</sup> Ibid.

<sup>78</sup> 1534, ‘The Supremacy Act [an Act Concerning the King’s Highness to Be Supreme Head of the Church of England and to Have Authority to Reform and Redress All Errors, Heresies and Abuses in the Same].’

be completed. While the state sought to impose closure, the limits of its authority were porous, and there was a constant need to reaffirm these boundaries. The reaffirmation of these boundaries was once again central in *An Act extinguishing the authority of the bishop of Rome*,<sup>79</sup> passed in 1536 to reaffirm the status of the King as supreme head of the church, in contradistinction to the Pope. What the Act did was to renew the legislation on Praemunire.

Additionally, Henry's Act rendered it illegal to have any contact with the See of Rome *tout court*. While the 1393 statute held that it was in cases concerning the king's authority versus the Pope that a case could be brought against an infringer, according to the new statute, 'if any person or persons [...] within this realm [...] shall [...] set forth, maintain or defend the authority, jurisdiction or power of the bishop of Rome or his see [...] shall incur and run into the dangers, penalties, pains and forfeitures ordained and provided by the statute of provision and praemunire.'<sup>80</sup>

Praemunire was thus defined as *anything* done in defence of papal authority in England. Such actions, as we can see from the quote above, were understood as being detrimental not only to the king or Crown, but also to the dignity of the realm.

As is clear from the 1536 Act itself, it is the fear of the effects of popish propaganda on the *beliefs* of the population which is the reason behind the statute:

divers seditious and contentious persons, being imps of the said bishop of Rome and his see, and *in heart* members of his *pretended* monarchy [...] dare whisper, inculce [induce], preach and persuade, and from time to time instill into the ears and heads of the poor, simple and unlettered people the advancement and continuance of the said bishop's *feigned* and *pretended* authority.<sup>81</sup>

Propaganda, as argued earlier, was an important strategy in persuading people of the legitimacy of the English King's authority as head of the Church. These acts, therefore have to be understood not only as pieces of legislation, but also as part of a more general debate or discourse on the sources of legitimacy in the context of the formation of the confessional state, and as statements or acts against the Catholic opposition.

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<sup>79</sup> 1536, 'An Act Extinguishing the Authority of the Bishop of Rome.'

<sup>80</sup> 1536 (28 Henry VIII, c. 10), 'An Act Extinguishing the Authority of the Bishop of Rome,' in *ETC*, pp. 366-67.

<sup>81</sup> *Op. cit.*, p. 366.(emphasis added)

With reference to Carl Schmitt's understanding of the legitimacy of the political association,<sup>82</sup> the early modern period saw a series of legitimacy contests between Church and State, between the universal aspirations of the authority of the Pope and the geographically demarcated authority of the modern nation state. On the part of states, these contests very much involved making use of the people's established loyalty to the Church and channelling it towards the new institutions of the modern states, especially towards the dual structure of political and ecclesiastical authority over the territories of the states. At the discursive level, these contests involved the ability to frame the discourse on the sources of legitimacy of the modern state in the established language on authority rooted in religion. The 1536 Act provides a very good example of this, as it argues the *pretended* and *feigned* character of the authority of Rome, which pretends 'to have [God's] ground and original of God's law.' Such beliefs, the Act claimed, are not only 'to the great displeasure of Almighty God [,]' but also lead to 'the interruption of the unity, love, charity, concord and agreement that ought to be in a Christian region and congregation.'<sup>83</sup> Thus, the legitimacy contest between the Pope and the national king is framed in the language of religious right and the will of God, where papal authority is claimed not only to have detrimental effects on the realm of England, such as the disruption of the unity characteristic of Christian regions, but also to be against the will of God. The Pope is not a true Christian, but one who has 'excluded Christ out of this kingdom.'<sup>84</sup> Belief in the Pope's legitimate authority outside of Rome is declared a 'superstitious and erroneous' opinion.

Finally, the Act does not solely concern the situation within the realm of England. While the exceptional character of England is often mentioned in statutes and acts, if the authority of Rome is to be limited by the borders of the modern state in England, it follows that this has to be the case for other political entities as well. The Act must therefore also be seen within the wider European discourse on the legitimate authority of temporal rulers in Church affairs. The Pope is thus claimed to have 'set forth to promote and establish his only dominion [...] excluding Christ out of this

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<sup>82</sup> Schmitt, *The Concept of the Political*

<sup>83</sup> 1536, 'An Act Extinguishing the Authority of the Bishop of Rome,' p. 366.

<sup>84</sup> Op. cit., p. 365.

kingdom [...] and all other temporal kings and princes out of their dominions which they ought to have by God's law.'<sup>85</sup>

## Concluding Remarks: Sovereign Practices and the Emergence of the State

In the present article, I have made the case for the socially constructed character of sovereignty, arguing that such an understanding not only allows us to dig into the emergence of the concept of sovereignty before 1648, but also to uncover the intrinsic and inherently problematic relationship between state and sovereignty. The fact that the state's discourse on sovereignty had to be grounded in a pre-existing ecclesiastical discourse on the limits of political authority had an impact on what type of polity was to emerge from the break with Rome.

For, studying the discursive practices of the state in the sixteenth century has implications for our understanding of the emergence of sovereignty. While it has been of fashion lately to replace Westphalia with the Peace of Augsburg of 1555, which sanctioned the principle of *cuius region, eius religio*, the present study suggests that sovereignty emerged instead as a *practice* embedded in a religious discourse on the boundaries of political and ecclesiastical authority. Thus, sovereignty, rather than being understood as a constitutive principle of international politics institutionalized through the Peaces of Westphalia, or even the Peace of Augsburg, must be understood as contingent upon historical practices. Where 'Westphalian sovereignty' assumes that the territoriality of the state is already established, I suggest an understanding of sovereignty as the practice through which this territoriality is legitimated and enforced. Furthermore, rather than representing a clear break with the feudal order of the *respublica Christiana*, sovereignty must be understood in relation to pre-existing legitimation practices. Existing discourses were appropriated and transformed in order to legitimize a new configuration of political authority.

Thus, while the discourse on the limits of political authority was clearly embedded within a Medieval discourse and terminology, and as such may at first give the impression that the polity was still clearly feudal and far from what we today understand as the state, the way in which this discourse was used, and bended by the

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<sup>85</sup> Ibid.

actors involved in legitimacy contests over the limits of political authority in the wake of the *respublica Christiana*, suggests otherwise. As I have argued in the present article, the manner in which the limits of political authority were legitimized, clearly suggests that these were modern polities which had many of the attributes which we generally associate with states. Thus, while the terms 'state' and 'sovereignty' were not used directly, there are strong indications that the break with Rome was the conceptual emergence of a new type of polity; at least in the case of England.