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Westphalian sovereignty: rights, intervention, meaning and context

P.A. Hayman and John Williams

Abstract

Over the last two centuries or so sovereignty has proved to be an enigmatic institution, at once constant and changing. Presently, it faces sustained and diffuse siege. Relatively few studies have approached this enigmatic institution from a semantic angle. This paper assesses the meaning of sovereignty within a framework of competing logics as it faces up to a key normative challenge – human rights – bringing together the apparently conflicting norms of non-intervention and intervention against a background of discourse analysis. From ‘Westphalia’ to the current logics of action and normative theory, the discussion places the institution of sovereignty against current, intra-disciplinary factors as an addition to the literature that serves to underscore how a fundamentally re-imagined concept is required, in theory and practice, to account for and promote humanitarian needs.

Westphalia: meaning and context

[The Peace of Westphalia] is null, void, invalid, unjust, damnable, reprobate, inane, empty of meaning and effect for all time. Pope Innocent X

The question of sovereignty

Over the last two centuries or so sovereignty has proved to be an enigmatic institution, at once constant and changing. It is the quality (and essentially the meaning) of it which dictates how it has been applied as a fundamental signifier of a particular world order by certain active and passive states. Presently, it faces sustained and diffuse siege.

Countless studies have charted the course of this institution and what has been affecting it in the contemporary world. Relatively few have approached it from a semantic angle, to discuss the implications of pressures regarding the meaning of sovereignty – fewer still how we might assess what it means to be sovereign. This discussion will assess the meaning of sovereignty within a framework of competing logics as it faces up to a key normative challenge – human rights. More specifically, it will bring together the apparently conflicting norms of non-intervention and intervention against a background of discourse analysis.

The period of sovereignty's ascendancy is (or was) statist. Now, though, variables from the social world are distorting the settled equation, demanding fresh approaches to the necessary and right extent of state power specifically regarding citizens. The principles of human rights, and their active, if imperfect, manifestation in the form of humanitarian intervention, are anomalous to what has gone before.

It has traditionally been difficult to see past Westphalian sovereignty. With its central norm of non-intervention, it has frequently been conceptually split to accommodate state behaviour in both domestic and international contexts which are

presumed to be essentially different situations. Human rights discourse has a significant, but distinctive, impact on both sides of this bifurcation. The issue here is whether this impact on either or both manifestations is sufficiently tectonic to alter the landscape of the international system – to assess not so much what lies on the horizon but whether we are still looking in the right direction.

The discussion will be directed thematically by the interpretations of ontology and norms that constitute and inform the development of sovereignty, and how its disruption might be recognised and manifested. The aim is to bring together the duality of Westphalian sovereignty through the idea of ‘old’ and ‘new’ sovereignty ‘games’ and the emerging norm of intervention, with a view to offering some analysis of the material and ideological complexity involved in re-imagining the meaning of sovereignty and with it the international system.

Westphalia: war and words

The Peace of Westphalia brought to a well-deliberated end the Thirty Years War, a conflict that had ravaged and blackened a Europe rent wide open by the possibilities of self-determination in identity and government. From then on, ‘Westphalia’ has become shorthand for a state management system that has held sway over international relations generating the received wisdom that history and long-standing is able to imbue. ‘1648’, as with all dates of significance, has increasingly run the gauntlet of de-contextualised reference, generating a reified and static dominant meaning.

This position has been under assault in recent years. The sceptics’ view is summarised concisely by Osiander; “...the discipline theorizes against the backdrop of a past that is largely imaginary...the accepted IR narrative about Westphalia is a

myth.”¹ The Peace of Westphalia is increasingly under attack from constructivists and others whose work questions both the established account of what happened leading up to 1648 and whether it should mean what it does today.

Westphalia is declared mythic because it carries the weight of age, but history is not a bygone conclusion. Its threads are there to be unpicked; “...it is not teleological, but it is retrospectively intelligible.”² The Peace achieved many things, but detractors claim that the content of the treaties bears little or no resemblance to what sovereignty has become. Teschke outlines some of these (non) contributory factors:

“The most obvious indicator of Westphalia’s non-modernity lies in the nature of the contracting political regimes. The treaties were not concluded between states but between rulers, or, to be more precise, between private persons and corporate bodies...none of the signatories to the treaties headed a modern state, nor did any contracting polity become one as a result of 1648.”³

The question which must necessarily follow is, does this matter? The answer hinges to a great extent on whether the legitimacy and meaning of a concept is dependent on that concept being derived either from fact or principle. Holsti contextualises Westphalia, in terms of subsequent conflicts; “the Peace...created a framework that would sustain the political fragmentation of Europe.”⁴ This indeed it did, setting in motion a pattern of *legitimate* fragmentation which spread from its European core. But this diffusion was neither uniform nor spontaneous; “By sanctifying Europe’s centrifugal forces, by providing a legal basis for the developing territorial particularisms of Europe...the documents licensed an anarchical dynastic states system and the internal consolidation of its members.”⁵

So anarchy began in 1648? If so, Westphalia appears to pose more questions than it answers. If anarchy had a starting date (be it Westphalia or not), its normative weight (in terms of non-intervention) is subject to challenge. That sovereign states might have their particular authority bestowed upon them by a tangible legitimating treaty is an idea generally long and conveniently forgotten by today's international arbiters of authority.

Rather than establishing the authority of sovereignty built upon the norm of non-intervention for the sake of future self-defence, participants in the Thirty Years War did so as a result of having reached a point of no return and were happy to sign a contract of political and economic reprieve. Whether this matters for the purpose of identifying 'Westphalian' traits is difficult to ascertain. That sovereignty was the overwhelming distraction of nineteenth and twentieth century scholars,⁶ to the point of misrepresenting its foundations, is not a hindrance to meaning if the rightful domain of IR is not history but politics. The meaning of sovereignty does not lie in pursuing the historical 'truth' of Westphalia, but in how the myth of Westphalia has been used to political effect. These two need not be contradictory, but they are certainly not coterminous.

Importantly "the architects of Westphalia thought in terms of statics. The solutions to the religious and hegemony problems were to be permanent."⁷ The Peace was regarded as the solution to problems timeless and universal. It was not designed as a flexible, legalistic precedent, but instead as a fixed 'roadmap' for future policy and action. A recurring theme that conforms to the image of statehood (or its historical equivalent) is that the "...semantics of restoration reflected the prevailing consensus that the treaties should not enact new principles of international public law, but rather codify the reversal to the status quo ante bellum."⁸ The idea of sovereignty

and its consequence of anarchy as static or timeless or universal has been vital to the institutionalisation and operationalisation of the ‘meaning’ of sovereignty.

For Osiander, and other critics, traditional IR has thought in the same terms of statics, so that “the lack of a clear, explicit break with the old type of account (with its ‘sovereignty-centred interpretive overlay’) has made it easier for IR to cling to its version of it, extreme and over-simplified as it is even in comparison to many older historical writings.”⁹ IR is thus to be found gazing contentedly at the shadows dancing on the cave walls.

The phenomenon is that “dates cannot lie, and the more distant the dates, the less the willingness to uncover their social content.”¹⁰ The implications for this study lie in whether sovereignty’s meaning is different if it is not firmly embedded in the distant, reinforcing past. Using the past as a positivist lens through which to focus the future, and vice versa, seems an inherently limiting exercise. As Jackson points out, “...conceptual and linguistic categories available to the statespeople at Westphalia were those of the late medieval era.”¹¹ Assuming that meaning has remained static ever since, as the dominant narrative of Westphalia tends to do, supports a positivist desire to treat social concepts as though they were material phenomena, reinforcing the static approach to sovereignty. However, whilst sovereignty has arguably seen the endurance of certain medieval notions into the modern world, social dynamics have seen these reinterpreted in the face of the looming threat of anachronism.¹²

Jackson concisely highlights what is apparently paradoxical about sovereignty’s qualities and application, especially during imperial expansion:

“...in the relations of European states to each other Westphalia inverted the practices of medieval Europe. But in the relations of European states to political authorities outside the European heartland and in the rest of the world Westphalia reiterated Medieval practices which asserted the superiority of Latin Christendom or Western

civilization, the moral inequality of peoples (and) the right of intervention....”¹³

Sovereignty’s meaning was thus dynamic, in the sense of ordering global and not just European practices, but static in its ability to maintain its peculiar status within its own accommodating sphere. In the language of constructivism, “...authority is constituted at least in part by mutual recognition: A state does not practice sovereign powers...unless it is surrounded by a community of states that recognises these powers.”¹⁴ The duality of sovereignty is intriguing. If sovereignty can be split into parallel discourses, one of continuity and one of change, does it lose its integrity? And does existence as a sovereign – within sovereignty – mean qualitatively less or more than it has since the establishment of the norm of non-intervention?

Meaning and duality

As the European powers gradually colonised the rest of the world in the centuries following 1648, sovereignty became not just the legitimating right of autonomous authority, but a standard to be achieved prior to official recognition. This new form (or expression of the form) of sovereignty enables the observer to visualise it not as a singularity, but as structurally diarchic. The sovereignty of the European states required the contrast to the subordination of the colonies to acquire meaning, and a normative contrast – civilisation versus barbarism – to acquire legitimacy.

Westphalian sovereignty, with its integral norm of non-intervention, has been used for different ends, but consistently to accommodate simultaneous continuity and change within the expanding universe of the international system.

This duality, this stretching-to-fit, is symptomatic of the deeper qualities of sovereignty. These two typologies of the popular use of sovereignty are usefully

characterised as the ‘old’ sovereignty game and the ‘new’ sovereignty game.¹⁵ The ‘old’ game is the preserve of the establishment in terms of use, both passive and proactive. The ‘new’ game is indicative not only of a temporal shift, but also of the newly arising material, constitutional and social conditions. This is best illustrated by de-colonisation and the resulting progeny of sovereign masters; “European states no longer demanded Christianity, but instead a secularised ‘standard of civilization’ for aspiring states.”¹⁶

Using the analogy of parallel games (or ‘fields’) within which states operate (having themselves been the creators) sets up the parameters for debating continuity and change and their relevance to the issue of sovereignty and norms. The next step is to account for the reasoning that underpins continuity and the reasoning that encourages change in sovereignty’s meaning. March and Olsen have detailed the ‘logics of action’¹⁷ that states follow in order to steer a justifiable course, preferably objectively, but often subjectively.

These logics are divisible into types that fit the continuity/change thesis. Logics of appropriateness serve as the reasoning tools applied where “...political institutions are collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations.”¹⁸ Logics of consequentiality, on the other hand, describe the scenario when “...behaviours are driven by preferences and expectations about consequences. Behaviour is wilful, reflecting an attempt to make outcomes fulfil subjective desires, to the extent possible.”¹⁹

This suggests that status quo behaviour – ‘appropriate’ behaviour – is objective, and that continuity by way of adherence to a settled trajectory is a transparent process. This reinforces the positivist preference for a static meaning of

sovereignty, adding methodological weight to the pressure of venerability in this direction. Change, or at least the management of it, is then significantly more complex; states follow internally legitimate procedures, perhaps at the expense of logical form. This field of mediate inferences is regulated by rules which, although naturally occurring in both cases, can again usefully be split for this discussion as an illustrative aid.

Fundamental to the discourse of continuity are the ‘constitutive’ rules of sovereignty, which are “...foundational, they define the core features of what sovereignty is.”²⁰ Concerning change, Sørensen discusses the regulatory rules of “...different sovereignty games played by different types of sovereign state,”²¹ and uses a definition from Searle which places them as rules that “...regulate antecedently existing activities.”²² That is, there is a formal structure within which progress requires precedent. Sørensen actually refers to regulative rules as the “...dynamic element of continuity,”²³ which is apt for describing the intramural extension of sovereignty and sovereign thinking.

The parallel discourses of continuity and change are markers for the reassessment of Westphalian sovereignty. In keeping with the theme of bifurcation, the distinction between negative and positive sovereignty serves to frame the discussion. The former has been defined simply as “...freedom from outside interference,”²⁴ and the latter as “...the means which enable states to take advantage of their independence.”²⁵ The distinction is between managing internal and external affairs with the implied assent of the international system and the ability to do so without it.

The continuity thesis involves the positioning of ‘players’ and the original game itself. The discussion will move from sovereignty as ontological priority,

through a process of familiarisation and significantly localised codification, to its placement regarding the system. Themes of detachment from that system and the characteristics of the working and aspiring norms will be analysed.

The rules of the continuity game

March and Olsen's logics of action are guides to reason in politics – employing logic provides a lens through which to attempt order and to establish an observable system. Logic and its methods are frequently associated with society, rules and the common good. Apparently to prevent anarchy spectacularly descending into chaos, actors follow rules that promote existing values. In order to achieve and maintain continuity, the rules of the ('old') sovereignty game need to express permanence – both for their own integrity and that of which they govern. In establishing appropriateness, "the process maintains consistency in action primarily through the creation of typologies of similarity, rather than through a derivation of action from stable interests or wants."²⁶ Constant reproduction of behaviour – conditioned behaviour – that results in a desired outcome which (not by chance) conforms to the establishment, is logically optimal for leading and aspirational actors.

These constitutive rules which form institutions are defined as "...persistent and connected sets of rules, formal and informal, that prescribe behavioural roles, constrain activity, and shape expectations..."²⁷ By Searle's formula, "X counts as Y in context C"²⁸ – the state counts as sovereign in the context of the (sovereignty based) international system. So for a state to be fully realised it must follow prescriptive rules that are frequently informal and additionally rely on external legitimation for this particular sovereign status. What marks the boundary between 'sovereign' and '*unsovereign*' in this sense is for theorists substantially more than a

line in the sand. Testing the quality of this sovereignty in terms of normative integrity requires confronting a situation where “...a state does either have sovereignty in the sense of constitutional independence or it does not have it...there is no half-way house, no legal in-between.”²⁹

But this is constitutional independence with a difference. Even without the inconsistencies posed by lacunae, the peculiarity of sovereignty is that it is *shared* independence – that is, independence on terms. If, then, the received wisdom of political logic governs this system having created it from normative foundations, is it capable of withstanding a substantial and sustained normative challenge? Can the static meaning of sovereignty endure in the face of demands for change that appeal to the logic of consequentiality that helped to create the old sovereignty game in the first place?

Continuity is thus marked by a focus on previously achieved goals and sovereignty’s meaning, especially its normative meaning, is tied to protecting those achievements. If sovereign states “...elect...to proselytise it must be within the rules of the game. This would exclude crusades, jihads, state-sponsored terrorism, the global communist revolution, forcibly making the world safe for democracy, and any other actions in contempt of sovereignty.”³⁰ By these terms, intervention is so anomalous to the game as barely even to exist at all. But the game is characterised by what might be deemed a flaw regarding its longevity.

In the classical game which still exists in the more developed parts of the world, players “... are logically and in many cases historically prior to the game. They are rulers of substantial political systems who are endowed with domestic authority and power and are therefore credible internationally: [they possess] empirical statehood.”³¹

If this is the case, sovereignty is teleologically incomplete, not only because of categorical differences in the quality of states, but also by the problematic ranking of the historically prior above the ontologically prior. This can be understood as a pragmatic move, appealing to a realist approach in which what is ‘right’ and questions of ‘ought’ bow to what actually happened and what will happen by whatever means for whatever ends. However, if sovereignty is to possess a static meaning underpinning a logic of appropriateness, it must stake out a more deontological position, to avoid the fate of historiographic representation. Such positions just *are*, and they are good, in the purest philosophical terms.

Sovereignty in its (neo)realist and (neo)liberal conception carries with it such a deontological element, forgetful of the historical story to be told and in accordance with the mythic version of Westphalia. This simultaneously reinforces the constitutive character of the rules associated with sovereignty and the logic of appropriateness that is both part of and an offshoot from those rules. However, it carries with it a conceptual *caveat*, that is, “to accept sovereignty is to create the notion of intervention and to accept the impermissibility of intervention as a challenge to both exclusion and authority.”³² In other words, what sovereignty is designed *not* to be becomes its essence. We can only understand the appropriateness of acting in accordance with the rules of the old sovereignty game if we are simultaneously aware of what is inappropriate, with intervention standing as the exemplar.

Chopra goes further in turning sovereignty on its head — “The theory of sovereignty is entirely incompatible with territorial limitations and frontiers”³³ — on the grounds that it has no identity and hence no boundaries. Without boundaries, how can we conceive and identify intervention and, by extension, appropriate and inappropriate behaviour? Sovereignty belies an existence as a misconceived nebula. It

is believed to be real, it is assigned duties of political motivation and so it is real. So what of normative change in the international system? Chopra's definition usefully repositions sovereignty as removed from its false elevation as 'system' in itself to a less exalted reification (as opposed to deification) – "sovereignty is not a fact ... it is a characteristic and is not measurable as more or less ... it is definitive and does not permit derogation without being rendered illogical."³⁴ If so, what of normative change in the international system?

Normative theory and non-intervention

To understand the impact of normative change, it is useful to have in mind the processes underpinning politically obligatory action. March and Olsen have compiled 'conventional litanies' for action.³⁵ In the case of the 'old' game of continuity, actors are said to approach given situations by asking themselves certain key questions and then providing an answer: "What kind of situation is this? Who am I? How appropriate are different actions for me in this situation? And then; do what is most appropriate."³⁶ Add to this Dyer's useful working definition of normative theory:

"[It]...is based on the primacy of norms and normative systems and structures, and thus subverts the traditional distinctions of is/ought and fact/value by locating all foundations in value choice. Normative theory concerns both the structure of knowledge and the framework of political reference."³⁷

The end product leaves the difference between theory and practice apparently insurmountable on grounds other than normative considerations as these provide the basis for the constitutive rules that grant the litany of appropriate action its plausibility. The existence of "...the gap between normative commitments and instruments allows governments to abuse human rights with virtual impunity,"³⁸

implying a breakdown along the line between intent, communication and action. Or are normative commitments the preserve of the few? Are they numerically and qualitatively divisible amongst states in the international system on the basis of their position as players of the old or new sovereignty game? Are they divisible at all?

If norms can change, it could be that the transformations are instigated by the international system in its 'old' sovereignty guise, or that the established game is adaptable and therefore somehow permeable. As Wheeler writes, "*Procedural* accounts of international legitimacy are predicated on the assumption that the test of legitimacy is state practice."³⁹ But legitimacy is as fluid or as stable as sovereignty and a powerful case can be made for the superiority of accounts of legitimacy stressing its normative content over procedural regularity.

Being a product of history is what defines adherents to the continuity thesis, granting it the weight of ages. To link Westphalia to late modernity, the international society of leading states, acting in concert, have built the edifice of sovereignty. Like bricks and mortar, it now stands detached from the sensitivities of organic vessels. This might imply that a reversal of the process of detachment could facilitate a congruence of human concerns – the Sovereign sharing the vision of subject. But a regression from institutional anarchy to monarchy or some other anthropic form is inconceivable.

What sovereignty means, then, is a product of its constitutive elements, and how they are normatively formed and influenced. The enabling chain consists of the links (sovereignty–non-intervention–state will) and its integrity depends on whether any point is prone to outside pressure. Strength is derived from the unity of actors and "the process maintains consistency in action primarily through the creation of typologies of similarity, rather than through a derivation of action from stable

interests or wants.”⁴⁰ It is the consistent quality of these links that dictates future action.

This raises the issue of whether intervention, especially when ostensibly based upon the tenets of human rights, is qualitatively different enough to upset the order of things. This issue is not of principal concern here, although an assumption of its merit is enough to problematise the meaning of sovereignty. As for non-intervention, the principle itself rests upon “...placing order between states before justice for the responsibility of making a decision as to whether an act or institution within any of them is just or unjust.”⁴¹ This suggests pervasive elements of awareness and choice – passivity as a considered option. If this is so, continuity is a preference swayed by the cost of non-compliance.

Vincent adds to the ‘weight debate’ with a timely riposte to the assumption of moral high-ground. That is, non-intervention’s superiority is due to “...the lack of a common Almighty, of a coherent and pervasive morality which transcends international frontiers and which might then inform and justify particular acts of intervention.”⁴² Equally, though, human rights (in its most basic, elemental form) could constitute that morality by providing an alternative constitutive rule, changing the outcome of the litany of appropriate action.

Kratochwil, in discussing the symbiosis of legalistic rules and norms, and their effectiveness, writes that “a rule is part of the system if it has been created in accordance with higher-order norms which, as secondary rules, authorize the creation, abolition or modification of the lower order norms (primary rules).”⁴³ Further reasoning suggests that, in terms of creation,

“metaphysically we can picture a rule arising out of an authorization by a higher rule or norm. Such an issuance, however, has nothing to do with a rule being created historically. The latter cannot be discussed

outside of particular historical circumstances and the action of the designated actors involved in such a process.”⁴⁴

This challenges the disembodiment that is representative of anarchy and the maintenance of its underpinning normative structure in the old sovereignty game. If ‘old’ sovereignty, rigidly based upon non-intervention, is promoted ahistorically, is its meaning similarly detached? Can sovereignty have a meaning, and an existence, outside of historical circumstance, and if not, can it be positively comprehended, measured, changed or even overthrown?

In a system managed by the philosophy of de-historicised *status quo*, the norm of non-intervention is in itself cause and effect. It is an inescapable part of the constitutive rules creating logics of appropriate action reinforcing sovereignty as a constant. Moreover, it has a political effect that has increasingly been called into doubt as not intervening has had catastrophic consequences. Understanding change thus becomes increasingly important. Finnemore and Sikkink provide useful references for building a language of change. The concept of a proactive facilitator – a ‘norm entrepreneur’⁴⁵ and a ‘normative vacuum’ (and ‘normative space’)⁴⁶ serve to colour-in our picture of how normative change might occur, and by these means to what end. They raise the point that “one of the criticisms of norm research has been that it provides no substantive hypothesis about which norms will be influential in world politics and under what conditions they will be influential.”⁴⁷ Surely on the criteria of influence, intervention, as the antithesis of non-intervention, demands attention. However, this attention needs to go beyond measuring the effect of a putative norm of intervention on state behaviour in order to address the impact on the meaning of sovereignty and whether it is coming to be defined by the antithesis of its classical political consequence, non-intervention. Understanding the relationship

between intervention and non-intervention and how this is potentially changing the meaning of sovereignty becomes important. The dominant teleology of sovereignty as constant may be yielding to its 'flip-side', a teleology of sovereignty as change, requiring our account of meaning to pay renewed attention to the social and dynamic aspects of sovereignty. The logic of consequence may be supplanting the logic of appropriateness.

Continuity, change and teleology

Maintaining a norm system in the face of multi-faceted opposition may produce two polar outcomes. Either the system realises its ultimate form by a process of incremental strengthening, or its opponents succeed in dissolving the mortar of its foundations. Alternatively, an uneasy balance emerges between the two, whereby a new, but inherently unstable, position is adopted containing in a delicate and shifting relationship aspects of both establishment and oppositional principles. This requires rendering malleable the establishment principle that the established teleology has petrified. Notwithstanding the fact that the norm of non-intervention is the underpinning convention of international relations, viewing this constitutive backbone of the 'old' sovereignty game as becoming a malleable entity in the face of pressures to address the consequences of a strictly interpreted non-intervention norm is a useful exercise for ascertaining, among other things, the hold of 'entrepreneurs' over future directions and how a teleology of change predicated on the basis of inclusivity and universality are changing the meaning of sovereignty and the norm of non-intervention.

To re-cap along with Sørensen, "...the constitutive content of sovereignty can be seen as a foundational rule in the form of 'X counts as Y in context C.'"⁴⁸ That

there exists a context 'C' – the international society of states – undermines the continuity thesis founded upon the 'old' sovereignty game and all that it represents by denying an ahistorical, deontological proposition about sovereignty and restoring it to the social world. And yet it appears to remain the fact that "...constitutional independence is a permanent feature of sovereignty."⁴⁹

A certain degree of detachment is needed to visualise this constant. It is, by this formulation, an inanimate stabiliser which effectively counters the constantly shifting, organic processes which necessarily constitute every conceivable 'society.' Indeed, "...there is a stable element in sovereignty which marks the continuity of that institution. That stable element is the constitutive core of sovereignty: constitutional independence possessed by states which have territory, people, and government."⁵⁰

Westphalian sovereignty in this form seems simultaneously to represent and embody the undiluted strength of its founding principle of non-intervention. It does this to the point that it "...signals a status that has many specific, functional purposes in international diplomatic and legal practice, and to that extent it has concrete and useful meaning."⁵¹ Does this cast doubt on any claims for meaning, regardless of their genesis? Perhaps so; "the inconsistencies in applying the rules under which sovereignty is accorded and the exaggerated and ambiguous claims that are made as to its meaning interfere with neither its legal value nor its utility."⁵²

The permanence may be mythic, then, but its centrality to sovereignty's meaning is only now coming under sustained assault, with the potential for emphasising domestic, normative and dynamic factors. Is it, then, intact but superseded? Manoeuvres around it suggest a change of *effective*, if not *literal* meaning; "...the development of guidelines for the forcible delivery of emergency assistance, building upon both historical and recent experience, can break the human

rights-sovereignty deadlock that so often paralyses debate as well as decision making in a system where states remain the **principle** actors.”⁵³ In other words, it can be re-written by proxy. (Please check spelling in original, and add [sic] if necessary)

Changing the meaning of sovereignty does not therefore necessarily rest on the rediscovery of the historical ‘truth’ of a sovereignty very different from that which we assume. Neither does it necessitate a triumph for an alternative deontological proposition, such as universal human rights. An alternative construction, plausible within the existing system can, if backed with sufficient political conviction, have a significant impact on meaning, setting in train a logic of change that acquires and affects meaning in a fashion distinct from the logic of appropriateness granting continuity. In particular, proponents of normative change seeking to re-connect sovereignty’s international political role with its domestic meaning are able to highlight a normatively powerful and dynamic alternative teleological trajectory for sovereignty. Sovereignty as responsibility to and for the people who inhabit a state understood as a mechanism for the attainment of individual or communal fulfilment has powerfully re-entered international relations.⁵⁴ This is not simply down to the impact of humanitarian crises on the agenda of international politics since the end of the Cold War, it can be traced back further than that, to the idea of a ‘new’ sovereignty game emerging in the circumstances of decolonisation. However the resolution of the tension between old and new in the meaning of sovereignty that took place at that time has come under renewed pressure since 1989.

Logic, consequence and the rules of change

Appropriateness in the international system is motivated by its own logic. The evolution of state behaviour frequently demonstrates another at work – the logic of

the 'new' sovereignty game. It is new because it involves new actors and new interests (or old ones, up against new problems) that seem to mark a significant difference in how we should formulate structure in terms of norms and intentions.

On the surface, the new sovereignty game "...involves basically two normative innovations: self determination of ex-colonies, and development entitlements of impoverished countries."⁵⁵ The state remains manifest as an impermeable unit, but:

"...the contemporary society of states has been articulating a norm of human rights which limits the autonomy of all sovereigns including those in the Third World... The unintended effect of this norm is to differentiate between states in terms of humanitarianism, with many Third World governments classified as inadequate protectors of human rights."⁵⁶

We must look to the generative principles of state behaviour to unpick the meaning of this putative system change. Jackson provides some key elements. Firstly, the contemporary society of states still contains players of the 'old' game, so that it cannot be entirely old or new. The uneasy balance between competing meanings is undoubtedly present. This is exemplified by the way that it is some of the old players who are most audibly articulating a norm of human rights. The consequence is to alter the basis for ordering the international system, downplaying fixed, foundational rules, and granting increased significance to current practice.

The logic that governs this type of action is that of consequentiality: "Logics of consequences see political action and outcomes...as the product of rational calculating behaviour designed to maximize a given set of unexplained preferences."⁵⁷ Behaviour is wilful, rational and calculating. But this does not mean unrestrained by rules and meanings.

Any game, however innovative, is governed by rules – ‘regulative’ in this case. It is the conception of ‘antecedently existing activities,’⁵⁸ beyond the elementary role of constitutive rules, which sets this formulation apart. The practice of sovereignty exists – it has a form recognisable to sovereigns and non-sovereigns alike, so that what occurs now is imprinted upon an existing template. March and Olsen’s litany in this case is for ‘anticipatory’ action, taking the form of questions and answer: “What are my alternatives? What are my values? What are the consequences of my alternatives for my values? Choose the alternative that has the best consequences.”⁵⁹ They observe that “despite the modern emphasis on the first litany [of appropriateness] as a justification for action, the second seems more often to describe action.”⁶⁰ But this is in a predominantly *domestic* context. Internationally speaking, Krasner contends that “...the international system is an environment in which the logics of consequences dominate the logics of appropriateness.”⁶¹ If this is the case, the litany for anticipatory action firmly posits choice and values at the heart of international relations, reinforcing the need for the meaning of sovereignty to become reacquainted with its normative dynamic and challenge the ‘domestication’ of such issues through the sleight of hand of the denigration of ‘reductionism’.

Whilst Dyer recognises that realism is not bereft of value recognition, it nevertheless remains that the once pre-eminent paradigm holds that “...value considerations cannot play a part in ‘serious’ international political theory.”⁶² Further, “...by emphasising the distinction between ‘is’ and ‘ought’ and concentrating on the cognitive force of ‘is’, realism tends to ignore the influence of ‘ought’ in the realms of knowledge and politics – an aspect of reality.”⁶³

This requires more than simply accepting that issues of ‘ought’ exist alongside issues of ‘is’ in the current international political set-up. Kratochwil expresses simply

the difficulties in conflating ‘right’ (related to deontological ‘good’) with the order of things. The problem stems from theorising beyond positivist boundaries, “...due to the breakdown of an either ontologically or consensually conceived universal moral order, we have historically opted for a conception of ‘rights’,”⁶⁴ that is, entitlements *within* a system, not immanently of the system itself. Morgenthau concisely summarises the realist position regarding the social foundations of human rights-led intervention;

“...the absence of shared experiences, universal moral convictions, and common political aspirations...far from providing evidence for the existence of a world public opinion, rather demonstrates its impossibility, as humanity is constituted in our age.”⁶⁵

This pre-supposes the need for a metaphysical answer to an existential question, but must it necessarily be so? If intervention/non-intervention are polar opposites, or conceivably the same thing, then the *cognitive force* of ‘ought’ (set apart for a moment from the presumptions of values and their attendant weight) must be significantly affective if employed as an instigator of action in producing action *different* from the expected – a cognitive shift propelled either ontologically or normatively. The challenge of human rights is therefore more than finding a way in which to accommodate such rights within a system predicated on a sovereignty presumed to be hostile to such universals. An uneasy balance predicated on an assumption of the mutual exclusivity of sovereignty and human rights presumes the sustainability of a monolithic meaning of sovereignty as constant. As has been shown, the non-intervention/intervention and the international/domestic bifurcations of sovereignty cannot be sustained on a deontological basis necessary for constancy. The challenge of ‘ought’ is to the basis of the meaning of sovereignty and that this

challenge is being recognised, no matter how imperfectly it may be being met, is symbolic of how the meaning of sovereignty in an age of rights is under fundamental challenge. Intervention as an alternative teleology of sovereignty can produce change in contrast to the teleology of continuity through non-intervention that is dominant. The one can not exist meaningfully without the other. Thus the meaning of sovereignty must be explored through the meaning of intervention as well as through that of non-intervention if we are to avoid a largely fruitless search for metaphysical answers to existential questions.

The meaning of intervention

Intervention has for a long time carried a significant weight and its ‘pervasiveness’ in political practice is increasingly recognised as posing problems for the narrow spectrum of received wisdom.⁶⁶ Casting our net, briefly, to the further edges of critical theory, it is worth noting here the intra-disciplinary contribution of more ‘dissident’ strands that have long been active at the margins of IR in providing an alternative narrative based on the discourse of sovereign history. Almost two decades ago, early post-structuralist contributions to the theory of sovereignty offered new ways of interpreting an ahistorical concept. Ashley describes the dual sovereignty of state and man, as conceived by modernity, as a clash between absolute forces. It is “...the practical disposition to privilege an historically constituted voice of ‘reasoning man’ as the sovereign centre and unquestioned origin of truth and meaning in history.”⁶⁷ This has implications for the fluidity of intervention as an accepted practice. Indeed, “in theoretical discourse on the anarchy problematique as in the modernist regime more generally, the construct of domestic society is chronically, necessarily, and unassailably privileged. It is so privileged because domestic society is taken to signify

the historical presence of a possibility condition that must be present if in history one is to invoke the sovereignty of ‘reasoning man’.”⁶⁸ The difficulties in systematically prosecuting a complex programme or regime of intervention, and reconciling this with a definable sovereignty, are manifest in the disputed realms of agency and structure.

In a political landscape where change and continuity are often barely distinguishable, post-structuralists talk of an institutionalised “...pre-text of apprehension”⁶⁹ falsely informed by “...the various reality-making scripts one inherits or acquires from one’s surrounding cultural/linguistic condition.”⁷⁰ What this adds up to is an abdication of responsibility legitimated by the prevailing notion of closed state-hood. Rules and language are generated by and dispersed amongst *territorial* agents whose motivations are encapsulated by the texts of their lives. According to Campbell, “...we need to develop an approach to responsibility that is cognizant of the way in which reterritorialization of states necessitates a deterritorialization of theory.”⁷¹

Even a move away from ‘post-’ IR work reveals a discernable consensus in principle. The, as yet, largely uncharted ground offered to mainstream IR theory by the politics and law of the environment is one such positivist-friendly area. A return to a ‘primary point’ along the line of socio-political evolution – a kind of ‘proto-theoretical’ leap – leads to notions of stewardship which in turn suggest the potential for a differently configured, wider sense of responsibility. The legislative option of ‘soft’ laws, for example, when operating in regulated common spaces (nothing new to scholars of European politics), offers a theoretical and practical way out of intervention problems, shaping along the way a notion of ‘responsible’ sovereignty⁷² as progress beyond the thorny issue of obligation. The difference being, of course,

that the ‘common space’ in question is a moral space, one which requires a theoretical foundation that accounts for its particular linear and temporal aspects.

With one eye on the importance of substantive argument, Kratochwil voices concerns about focusing on empirical regularity alone; “Exceptions to a rule have to be based on similarly categorical norms rather than on mere considerations of efficiency in the pursuit of a desired end.”⁷³ But when the rule is the polar opposite of the original or primary norm (or extension of the same thing), then is it not the case that categorical requirements are automatically fulfilled, calling only for a shift from a positive to negative formulation (or *vice versa*)?

To ascertain what intervention means can thus begin from where non-intervention ends. Weiss and Chopra offer a way of re-visiting our political geography with a new conceptual tool – inclusivity: “Because humanitarian space is not linked to territory and transcends sovereign boundaries, it becomes increasingly difficult to speak of “intervention” within it.”⁷⁴ This must involve a continuing process of disengaging humanitarian intervention from traditional, Westphalian sovereignty into a realm purely of its own defining. It is necessarily a long process, one that “...is in transition, and the term intervention has yet to be erased from the lexicon of international affairs.”⁷⁵ If or when it is, will it achieve the position of having meaning without a label?

Weiss and Chopra argue for the depth of such a change as affecting the mechanisms which inform our conscious of *what is* and *how it is*;

“the analytic significance of humanitarianism is that it reflects not a change in technology or phenomena but rather an evaluation in perception. This qualitative shift from “material interdependence” to “moral interdependence” necessitates an ethical vision in which human values supercede state rights.”⁷⁶

But again it is the qualities of this vision which affect meaning, that is, a more fundamental question of ontology comes into play – whether an ethical vision is more legitimate and sustainable than a pragmatic or political vision as a manipulator of wills (or, indeed, whether an ethical vision can be all of these in effect).

For this type of contemplation, Dyer offers useful insights. Speaking of “Mervyn Frost’s account of the ‘positivist bias’ in the study of international relations...Frost argues that normative approaches and positivist theories are epistemological equals – though normative theory has some residual advantages over positivism.”⁷⁷ A residual value drawn from their origin, perhaps? Not the reflection in the ‘mirror’ used in the correspondence theory of truth,⁷⁸ but what is being mirrored itself – what is immanently real. In Dyer’s words,

“...the introduction of a validating ‘realm of discourse’ opens up the possibility of assigning a similar cognitive status to both descriptive and prescriptive normative statements (value propositions) such that it is as acceptable to make truth claims about values themselves as about value-directed facts, though neither enjoys epistemological privilege.”⁷⁹

It is the discourse itself “(which)...provides a security of meaning without the liabilities of absolutism.”⁸⁰

So there can be little doubt that intervention, used as it is by states in the name of humankind, is a moral principle. The issue of its meaning (and consequently that of sovereignty) seems to be reliant upon a cognitive status derived from epistemological roots that serve to legitimise its internal logic and the external, proximal reasoning of it. Skinner provides a general political formulation of principled action (which he does not necessarily agree with) that can be applied to intervention:

“To explain an action is normally to cite the goal that an agent wishes to bring about – corresponding to their motive for acting – together with the belief that the performance of the action will conduce to the attainment of the goal. If someone professes to be acting for the sake of a moral principle, and if the principle is genuinely their motive for acting, then it is obvious that the principle makes a difference to the action and will need to be cited in any attempt to explain it.”⁸¹

If this is indeed the case, then intervention as a moral principle is effective *because of* its morality, as it is this which constitutes the quality of the action. Regarding the moral character of rules, Kratochwil takes a long view and explains that

“communicative action, which evolves when ritualistic bonding in primitive society comes under pressure, establishes a conceptual frame within which the force of norms as conduct guiding devices can be discursively ascertained.”⁸² In other words, the moral quality or factor is identifiable when the scope of the containing unit (in this case rules) widens to incorporate other, related systems of thought and practice that have similarly reasoned ends. Concerning action, “...moral facts expressed in rules of conduct are valid not because of threatened deprivations, but because of their duty-imposing character, which is in turn the precondition for the legitimacy of physical sanctions.”⁸³

With non-intervention as the norm, a moral paucity is apparent in the ‘truth’ of the segregation of states. Intervention, on the other hand, is the realisation of a positive duty to act which is its very character, and therefore meaning – and by extension is the character of the international system it would embody. However, non-intervention is not founded upon morality, it is a legal rule. Alternatively, intervention, as it currently stands, is conventionally moral. How the two are used on a practical basis provides insight into the meaning of both intervention and sovereignty.

Kratochwil has produced four justifications for the transgression of a moral principle as opposed to a legal rule, the first of which adds most to the momentum of this particular discussion. Taking its cue from a logical background where "...we speak of a "violation" of legal rules; policies, on the other hand, are not violated but changed, precisely because the discretion allowed makes implementation usually solely a matter of the unilateral calculus of the actor,"⁸⁴ the justification is that "...moral arguments utilize mostly "principles" rather than specific rules."⁸⁵ There is, though, a *caveat* (which may or may not affect the validity of the outcome) in which "this...means that much of the argument will turn on the questions of applicability of a principle, since principles do not specify their range of application. It is the specificity of legal rules...that leads often to divergent assessments of the "legality" versus the "morality" of an action."⁸⁶

Kratochwil's fourth point on this matter is also useful; "...moral arguments often exhibit a great deal of indeterminacy and the moral analysis of an issue often cannot but point out the existence of a "dilemma" and leave it at that. Legal decision-making, on the other hand, is characterized by the need to come to a final decision."⁸⁷ Currently, the experience of intervention has not been conducive to its acceptance on anything other than moral terms. When legality and morality have met, sovereign status is apparently violated, for varying lengths of time, but so far without the consistency of approach to demand normative and systemic change.

What is left at the periphery of the debate is confusion in going forward. The moral/legal clash is difficult to resolve, especially in an environment increasingly pressured by the urgency of moral claims. Reus-Smit is dismissive of the mutual repulsion of norms; "treating these as separate, mutually contradictory regimes obscures the justificatory role that human rights principles have performed in the

constitution of the modern sovereign order.”⁸⁸ The ‘sovereignty as island’ formulation does not sit well; “The organizing principle of sovereignty has never been a self-referential value; it has always been justified with reference to particular conceptions of legitimate statehood and rightful state action.”⁸⁹

With this position in mind, it is clearly “...a matter of logical priority to have developed a conception of justice before policy can be conceived to promote this conception.”⁹⁰ The argument most convenient for players of both sovereignty games is thus:

“Acknowledging that there is a robust natural duty of justice that requires citizens to use their state’s resources to help ensure that all have access to a rights-protecting regime is an important theoretical advance in the doctrine of human rights. But from this alone it does not follow that it would be legitimate for the international legal system to *enforce* a duty on the part of states to contribute to the establishment of justice for all persons.”⁹¹

This leaves sovereignty at a point of logical, ethical and political uncertainty having been enveloped by a social world. The demands of contemporary actors have distorted the bifurcation in sovereignty’s meaning that traditionally externalises intervention. This has served to create movement in the field of sovereign existence that not only ties a state’s domestic policies to its claims to sovereignty, but also challenges the utility of sovereignty in explaining other states’ responses to such challenges. Intervention not only affects the meaning of sovereignty for the ‘target’ state, but also for those acting, or failing to act, in the face of appeals to humanitarian, or other, necessity.

This (inter)active field of sovereign existence and action must be considered before any reason can be conferred on to the subject itself. Dyer provides a useful guide for doing this;

“...there is a degree of objectivity to be found in the need for coherence with ordinary experience – not in the positivist or empiricist mould, but in the sense that any explanatory scheme must give a plausible account of ‘reality’ – and this aspect of ‘facticity’ provides grounds for judging the merits of a particular interpretation, necessarily through the medium of a pertinent ‘language’ or discourse since these are the only available means of discussion.”⁹²

Sovereignty must, then, suffer the fate of being externalised without achieving meaningful connection with reality through its own generative principles if they are always relative to other, politically equal concerns. In other words, sovereignty’s meaning needs to be theorised in ways that include intervention, not in ways that treat it as sovereignty’s essential opposite.

The theme of separation, characterises our visual and therefore logical representation of the field of enquiry. The reaction from genesis to process is of fundamental then teleological importance, naturally, but only when we have the appropriate language to describe it. What is appropriate language, of course, is still up for grabs. Regarding meaning and language, “...there are words, symbols, or other *conventional* devices that *mean* something or express something or symbolize something beyond themselves, *in a way that is publicly understandable*.”⁹³

Searle’s work provides a social logic for political action. The interaction ‘across extended periods’ takes place not simply temporally but spatially, wherein the ‘period’ transfers dimensionally to a unit of social action, thus affecting the procedural hierarchy of events and forging deeper into the historicity of any given moment. Each resonant moment along this chain then contributes to the overall logical structure of the (perceived) guiding principle – in this case, sovereignty. The structure is logical if it is reconcilable with what we know or what can be reasoned.

Conclusions

From the origin of a well-documented yet imaginary past, Westphalian sovereignty still apparently evades capture. The ‘meaning’ of Westphalia, with little or no concern for the particularities of the late-medieval cognition that created it as an appropriate solution to the challenges of its time has been maintained into the present day in remarkable ways. The arguments for appropriate behaviour have been legitimised by reference to the idea that Westphalia was set in motion by the contracting parties with the intention that it would fluidly regulate present and future relations. By dealing with ‘statics,’ the event-less constants of received conduct, it has also managed to set in motion a great misconception. This is that an ahistorically reasoned concept must logically be subject to equally detached analysis – that its proper realm is a dimension apart from human experience, and therefore knowledge.

The perpetual externalisation of sovereignty is the logical human partner for its *ahumanistic*, *ahistorical* positioning. Intervention upsets the order of things. It significantly alters the interactive parameters of states and efforts to incorporate it within the notion of a timeless logic of appropriate action strain the fabric of the settled notion of Westphalia to breaking point. Instead, the meaning of sovereignty needs to be understood through a recognition of the tensions that are an irremovable element of the meaning of sovereignty. Where there is a logic of appropriateness, there is the challenge of the logic of consequence; where there are normative pressures for constancy, there are normative demands for alteration; where there is the weight of the past, there is the opportunity of the future.

Searching for *the* ‘meaning’ of sovereignty is thus a futile task. This is not just a simple historical point – that sovereignty has meant different things at different times and in different places – it is to assert that the meaning of sovereignty cannot be

settled in the social world. Even the ideas of logics of appropriateness and of consequence that have informed this analysis of sovereignty serve principally to highlight how it is that meaning is elusive. ‘Appropriateness’ may, indeed, reflect the procedural and bureaucratic accounts of sovereignty that have done so much to render it ‘static’ in the eyes of many.⁹⁴ This, however, is to a considerable extent unavoidable. In arguing for the nature of the meaning of sovereignty in the terms of logics, we have been keen to emphasise that any such analytical construction brings with it privileged aspects of the social world to which sovereignty must be returned. This cannot be done ‘neutrally’ or ‘impartially’ and thus talk of the meaning of sovereignty, and of the role of intervention and non-intervention in constituting such meaning cannot be impartial. The challenge of intervention as an essential element in the meaning of sovereignty, rather than its opposite, is therefore not just about what to do when appeals to address a situation within a state seem irresistible, it is about how more adequately and appropriately to reintroduce sovereignty to that vital aspect of human existence from which it has so long been divorced – the social world that makes sovereignty meaningful, rather than simply a label.

This meaning is currently going through a period of intense scrutiny and debate, seeing Westphalia’s meaning restored to the context of the social world. Pope Innocent’s famous claim about sovereignty was not just wrong in the sense in which he presumably meant it – rejecting the diminution of Papal authority that Westphalia brought about – but, more enduringly, the very terms he used to deny meaning to Westphalia and to the construct of sovereignty created upon its myth are indicative of a debate about the meaning of Westphalian sovereignty that remains live to this day. For the victims of humanitarian disaster Innocent’s language, when applied to a doctrine of sovereignty that legitimises non-intervention as the appropriate course of

action in the face of their human needs may seem apposite. Fortunately, this view is one that has gained discursive hold in international relations and the consequences of sovereignty are resulting in a period of dynamism in its meaning that is ensuring that whilst not 'empty' of meaning sovereignty's meaning is in flux in ways that may more fully recognise and respond to intervention's role in creating meaning.⁹⁵

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