

The Medieval Foundations of the Theory of Sovereignty

Written by Andrew Latham and Chris Werbos

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ANDREW LATHAM AND CHRIS WERBOS, APR 6 2020

In the spirit of the recently published book *Medieval Foundations of International Relations*, the purpose of this article is to provide 'insight into the medieval influence on some of the fundamental ideas and practices that are said to exemplify the spirit of modern international relations' (Bain, *Medieval Foundations*, p. 5). It does this by demonstrating how, during the course of a seminal 'great debate' that took place at the turn of the fourteenth century, John of Paris assembled a number of concepts that were then circulating in Latin Christendom into an account of sovereignty that would have been recognizable as such to Hobbes, Bodin and other early moderns. To be certain, jurists, theologians, philosophers and polemicists had been debating the locus of supreme political authority throughout the course of thirteenth century, with some making the case for *imperial* supremacy and others arguing for *papal* supremacy. And certain memes regarding *regnal* supremacy – *rex in regno suo est imperator sui* (the king is emperor in his kingdom) and *rex qui superiorem non recognoscit* (king is he who recognizes no superior) being the two most common – had been circulating in juristic circles since c. 1200. But during the turn-of-the-fourteenth-century conflict between pope Boniface VIII and king Philip IV of France something new was decisively introduced into the discourse: a comprehensive treatment of the idea that supreme political authority was vested in neither emperor nor pope, but in the king of a territorially delimited, independent kingdom.

Specifically, the argument we will develop in this article unfolds as follows. Throughout the thirteenth century, two basic models of sovereignty were in circulation in Latin Christendom. On the one hand, there was the 'hierocratic model'. This model accepted that *societas christiana* (the Christian world) was divided into two domains or orders each governed by its own distinctive powers, but argued that as the spiritual power exceeded the temporal in honor and dignity, it also exceeded it in power and jurisdiction. According to this view, the spiritual power in effect mediated between God and the temporal powers, instituting the latter on God's behalf and judging it if it failed to do His will. Supreme authority was not shared by two coordinate powers, but vested in the spiritual power alone. This power could delegate the material sword to the temporal authority, but that authority was then expected to wield it in the service of God and His church. If it did not, the spiritual power could remove the material sword from the prince's hand and transfer it to someone more worthy. On the other hand, there was the 'dualist-imperialist model'. On this view, the *societas christiana* was divided into two domains or orders – lay and the clerical – each of which had its own distinctive way of life and each of which was governed by its own distinctive power. In an already well-established analogy drawn from scripture, emperors were said to wield the material sword and govern the temporal domain (the universal Empire), while popes wielded the spiritual sword and governed the spiritual domain (the universal Church). Neither power infringed on the jurisdiction of the other. Both derived their powers directly from God and while the spiritual power enjoyed greater dignity this did not translate into greater power, authority or jurisdiction. Supreme authority to legislate, command and judge was thus divided between two co-ordinate powers: the Church and the Empire. By the middle of the fourteenth century, however, these two models had effectively given way to a radically new one, which we will call the 'dualist-regnalist' model. This occurred in two stages. The first, involving a number of conflicts between popes and emperors during the thirteenth century, culminated in the evolution of two dominant ideas of sovereignty: the hierocratic and the dualist-imperialist. The second, involving a number of conflicts between popes and *kings* (rather than emperors), culminated in the decisive defeat of the hierocratic model and the simultaneous mutation of the dualist-imperialist one into a radically new political vision – one that vested supreme temporal authority to legislate, command and judge not in the universal Empire as had the dualists in the preceding century, but in territorially limited and autonomous kingdoms. According to this new model, supreme authority was vested neither in the pope nor the emperor; nor was it divided between coordinate temporal

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and spiritual powers (kings and popes). Rather, it was vested in the king, who held it directly from God (or, in the case of John of Paris, the people) without any papal or imperial mediation. Significantly, according to this new political vision the king's supreme authority to legislate, command and judge applied to the clergy as well as the laity, at least with respect to temporal matters (about which more below).

In this article, we examine what is perhaps the key 'inflection point' in the second stage of this historical process, tracing the way in which a bitter conflict between king Philip IV of France and pope Boniface VIII at the turn of the fourteenth century resulted in both the effective extinction of the hierocratic vision and the mutation of dualism into something qualitatively different from what it had been during the thirteenth century. Our main argument is that in defending the right of the French king to try French clerics in French courts in the opening years of the fourteenth century, the pro-royal polemicists (represented by John of Paris) not only realized their goal of demolishing the hierocratic conceptual framework, but in the process quite inadvertently undermined the premises of the dualist-imperialist one as well. Drawing on the theological, juristic and philosophical resources available to them they simultaneously developed a new political vision, characterized by novel and distinctive arguments and assumptions regarding the locus, source and character of supreme authority. While this process was not completed until the middle of the fourteenth century, by the time of Boniface's death in 1303 it was certainly well underway.

***De Potestate Regia et Papali*: The Dualist-Regnalist Argument of John of Paris**

Arguably the most important pro-royal tract produced during the conflict between Philip and Boniface at the turn of the fourteenth century, was *De potestate regia et papali* ("On Royal and Papal Powers"), written and revised several times by John of Paris (Jean Quidort) between mid-1302 and early 1303 (Monahan, *On Royal and Papal Power: A Translation, with Introduction, of the De Potestate Regia et Papali of John of Paris*). John, a highly regarded member of the faculty at the University of Paris, was a supporter of the French crown – a fact attested to by his decision to join his fellow Dominicans in signing the June 1303 petition calling for the pope to be tried before a general council of the Church. Despite his pro-regnal proclivities, however, he did not write *De potestate regia et papali* as a polemical tract dealing specifically with the conflict between Philip and Boniface. Rather, he wrote it as a scholastic work meant to examine the generic or philosophical relationship between the *sacerdotium* and the *regnum* (*sacerdotium* refers to the priestly element in Christian society; *regnum*, to the royal element). As a result, the tract has the structure and tone of a calm, relatively dispassionate and scholarly treatment of the issues in question. It relentlessly marshals scriptural, canonistic, patristic, Aristotelian-Thomistic and contemporary polemical sources to challenge the hierocratic thesis. Significantly, although formally structured as a refutation of the main philosophical arguments of hierocrats like Giles of Rome and James of Viterbo, John's treatise also made a powerful positive case for the supremacy of kings (rather than emperors) in the temporal realm.

In writing *De potestate regia et papali*, John had provided Philip and his supporters with a powerful dualist rejoinder to the increasingly strident hierocratic claims of Giles of Rome and James of Viterbo. In the course of mounting this defense of the dualist thesis, however, he made a number of assumptions, assertions and arguments that were ultimately more regnalist than imperialist in nature. This was perhaps most evident in connection with his treatment of the *locus* of supreme authority to command, legislate and judge. In this connection, John's most significant innovation was to naturalize the *regnum* (rather than the *imperium* or empire) as the locus of supreme authority. Like James of Viterbo, John grounded his entire argument on the Aristotelian premise that both society and government were natural. But whereas James had insisted that the temporal power must be sanctified by the spiritual if it were to be truly just and perfect, John insisted that 'the Regnum, as the highest form of natural society, can be fully perfect in a strictly natural sense without the necessity of sanctification by the Church.' (Morall, *Political Thought in Medieval Times*, p. 90). If the *regnum* was the highest form of natural society, however, it was always only potentially so. In order to ensure that it remained ordered toward the common good, understood in terms of the Aristotelian-Thomistic idea of the good life, each *regnum* required a governor – that is, a single person, a king, charged with steering the kingdom in the right direction. And, if these kings were to carry out their essential function, they required certain powers. These powers were those of temporal jurisdiction – the powers to command, legislate, and judge in temporal affairs. John concluded that the source all these powers was God and that kings, therefore, were subject to no higher power save God Himself.

The Medieval Foundations of the Theory of Sovereignty

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John also recognized that, in locating supreme authority in the hands of the various kings of Latin Christendom, he was painting a picture of what in later times would be called the 'international system' of his day. In his view, the world was naturally divided into separate kingdoms, like France and England, all of which claimed supreme authority within their borders. Even the Empire, despite its universalistic aspirations and pretensions, was to John just another kingdom among the many that populated the *respublica Christiana*. Having swept aside ideas of celestial hierarchy, hierocratic claims that kings held the material sword from the pope (as God's vicar on earth), and imperialist pretensions to universal jurisdiction, by the end of *De potestate* John had developed (if only implicitly) a sketch of an 'international system' comprising sovereign kingdoms interacting in the absence of any superior temporal or spiritual authority – i.e. a system or society of 'states' interacting under conditions of 'anarchy', as those terms are generally used in the International Relations literature (Monahan, *On Royal and Papal Power: A Translation, passim*).

But what, specifically, was the *character* of this supreme authority to rule or govern. For John, the answer to that question was to be found in the concept of *jurisdiction* or 'jurisdiction'. John began his examination of this phenomenon by first differentiating it from dominion, with which it had often been confused or conflated. Jurisdiction, he argued, was the power to govern or rule through the law, while dominion referred to possession or property rights. Having thus disentangled these two phenomena, John then set about specifying jurisdiction's various entailments. Jurisdiction *qua* jurisdiction, he argued, was always the same phenomenon; whether wielded by the temporal or spiritual power, it always referred to the power to govern or rule in the interests of the common good. To the extent that the jurisdiction of kings differed from that of popes, it did so not in terms of the nature of the power itself, but rather the object of that power. Popes had supreme jurisdiction over the institutional Church – that is, they had the power to command the clergy and to determine what was just and unjust in disputes among the clergy. They also exercised stewardship over the Church's corporately owned property. Popes did not, however, exercise either dominion or jurisdiction over the goods of the laity. Nor did they exercise any jurisdiction in the temporal affairs of the *regnum*. Nor, finally, did they possess any coercive power to enforce their will other than their internal disciplinary powers over the clergy. Kingdoms were simply not the proper object of papal jurisdiction. On the other hand, John argued, kings did possess supreme jurisdiction over the kingdom. They could command their subjects, make laws and enforce them. And, unlike the popes, kings had the power to punish and coerce wrongdoers – indeed, although he doesn't say it explicitly, John strongly implied that kings enjoyed an ultimate monopoly of coercive power within their kingdoms. To be sure, John carefully limited this monopoly so that it didn't violate or impinge upon the jurisdiction of the Church.

Contrary to what Philip and his supporters doubtless would have preferred, John explicitly placed members of the clergy under papal rather than royal jurisdiction. But he also left the door to regnal supremacy open by arguing that kings may tax the Church's temporal properties, and by implying 'that a bishop may fall under temporal jurisdiction if he is accused of a strictly civil crime' such as treason. Overall, John's treatment of jurisdiction had the dual effect of both severely limiting the authority of the Church in temporal matters, while greatly increasing the power of kings, not to interfere in strictly spiritual or internal Church matters, but to tax and try the clergy as royal subjects. Put slightly differently, 'Although John always treats Church and state as parallel, the type of authority given to each ensures that in fact the secular power must always prevail' (Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages*, p. 141.)

Although John argued that the king held *supreme* temporal jurisdiction, he did not claim that the jurisdiction was *absolute*. John understood supreme authority to be limited primarily by the principle of what has subsequently been called 'popular consent'. His argument in this connection was that each kingdom was in effect a 'corporation' (*universitas*) and that the head of the corporation, the king, derived his powers from the body of the corporation. Originally developed in classical times to refer to 'associations of persons in both public and private law,' by the twelfth century the concept had been taken up by jurists to define the structure of small groups within the Church (a cathedral chapter, for example) as well as the universal Church itself. By the end of the thirteenth century jurists had begun to apply the logic of corporation theory to kingdoms as well. In both cases, they defined the corporation as a community (a) possessing a distinctive legal personality, (b) shaped by its own unique customs, purpose and composition, and (c) simultaneously 'composed of a plurality of human beings and an abstract unitary entity perceptible only to the intellect' (Canning, *A History of Medieval Political Thought*, p. 172). The jurists also fashioned a doctrine of the proper relationship between the corporation, its members and its 'head'. Basically, the head of the

The Medieval Foundations of the Theory of Sovereignty

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corporation was the embodiment of the legal person of the corporation and enjoyed considerable authority to act autonomously on its behalf. Significantly, however, corporation theory also placed strict limits on this authority. Above all, the head of the corporation was required to honor the customs and constitution of the corporation, to seek the counsel and consent of its members, and to act in its best interests. Breach of this contract between the head of a corporation and its members constituted grounds for the removal of the head. Supreme jurisdiction then, John implied, was not without 'halter and bridle' as Giles of Rome had claimed in connection with the pope. The nature of the royal office, divine law, the *ius gentium*, customary law, and even the 'constitution' of the realm all imposed constraints on kings – constraints that were ultimately enforceable by 'the people electing' (the barons and peers) taking steps to depose the king, either on their own initiative or at the instigation of the pope.

Finally, as this last constraint suggests, although John held that the temporal and spiritual powers existed in parallel, he did not manage to completely separate them. As mentioned above, he claimed that the pope could indirectly or 'accidentally' (*casualiter*) depose an incorrigible king or emperor through excommunication for grave spiritual failings or, if the 'people electing' demanded, for grave temporal failings as well. This deposition would be indirect in that it would be accomplished by the people, rather than by the pope directly. Similarly, the emperor could depose a pope at the behest of the cardinals (in the case of grave spiritual failings) or on his own initiative if the pope's failings were temporal in nature (lending money usuriously, for example). However, while not disentangling the two powers completely, John did manage to more narrowly circumscribe the circumstances in which the pope could remove the emperor and vice versa.

Conclusion

What is the significance of all this? To begin with, this narrative demonstrates how, during the course of a seminal 'great debate' that took place at the turn of the fourteenth century, a concept of sovereignty crystalized in Latin Christendom that would have been recognizable as such to Hobbes, Bodin and other early moderns. For John, sovereignty was vested in neither pope nor emperor but in the king. Bodin, to take perhaps the most important of the early modern theorists of sovereignty as an example, also vested supreme power in the king. Both saw the king as the 'final source of authority and jurisdiction' in the temporal realm. John understood sovereignty as entailing *supreme* power, not *absolute* power. For him, the power of the king was limited by the nature of the royal office, divine law, the *ius gentium* (or natural law common to all civilized peoples), customary law, and even the 'constitution' of the realm. Even the later Bodin, who wrote about sovereignty in increasingly absolutist terms, continued to recognize that the sovereign was limited by natural law, the fundamental laws of the realm and the inviolability of private property – even if he thought those limits unenforceable. A slightly different list of constraints, to be sure, but clearly bearing at least a family resemblance to John's. Finally, both saw sovereignty as deriving first from natural law and then, ultimately, from God. This is not to argue, of course, that there were no differences between John's understanding of sovereignty and that of Bodin. John, for example, specifies a mechanism whereby the people can remove a monarch violating the constraints mentioned above, while for Bodin the idea that any earthly power could hold a true sovereign accountable was preposterous. Rather, it is to suggest that Bodin represents less a radical departure from the medieval tradition of theorizing sovereignty than the apotheosis of it. This is significant because it strongly suggests that the break between the Middle Ages and the modern era that is such an important element of IR's disciplinary mythos is not really the 'Great Divide' it is made out to be. It is not, in other words, the world-historical moment when the medieval order (including those constitutive norms and ideas that underpinned it) evanesced to be replaced by the radically new order we now call modernity. Rather, it appears as something of a 'little divide' separating two more-or-less distinct eras within a single historical epoch defined by a common intellectual tradition of philosophizing about sovereignty.

Beyond demonstrating the existence of a discourse of sovereignty that predates the supposed invention of that idea in the sixteenth century, this narrative also problematizes a concept that has come to enjoy great currency in certain IR circles – the concept of 'heteronomy'. The prevailing view in the IR literature is that the organizing principle of the medieval world order was not sovereignty, but 'heteronomy' – a distinctively medieval system property that produced functionally differentiated polities (never states) subject to different laws of development. External sovereignty, according to this conventional wisdom, was impossible because of the universalist claims of the pope and emperor, both of whom asserted and exercised authority over kingdoms, principalities and cities. Similarly, internal

The Medieval Foundations of the Theory of Sovereignty

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sovereignty was short-circuited by feudalism, custom, and ecclesiastical and temporal 'liberties', all of which meant that there was no supreme locus of political authority within any given polity. The result of all this, according to the narrative, was that Latin Christendom was segmented politically into a number of qualitatively distinct types of political unit – the Holy Roman Empire, the Catholic Church, city-states, urban leagues, feudal lordships, principalities, kingdoms, and even guilds and monasteries – all of which were 'structured by a non-exclusive form of territoriality, in which authority was both personalized and parcelized within and across territorial formations...' (Ruggie, 'Territoriality,' p. 150). By way of contrast, the modern international system is represented as comprising 'territorially disjoint, mutually exclusive, functionally similar states possessing both internal and external sovereignty' (Ruggie, 'Territoriality,' p. 151).

The account developed in this article disrupts this conventional wisdom by painting a relatively detailed picture of the dualist-regnalist constitutive norm that came to dominate the Latin Christian political imagination over the course of the fourteenth century. What does this picture look like? Simply put, in locating supreme authority in the hands of the various kings of Latin Christendom, John painted a picture of a world that was naturally divided into separate kingdoms, like France and England, all of which claimed supreme authority within their borders. Even the Empire, despite its universalistic aspirations and pretensions, was to John just another kingdom among the many that populated the *respublica Christiana*.

Having established that sovereign kingdoms/principalities (on varying scales, from the Empire to kingdoms to leagues to city-states) were the constituent political units of Latin Christendom, John strongly implied the existence of an 'international system' comprising sovereign 'states' interacting in the absence of any superior temporal or spiritual authority (i.e. anarchy). This is hardly consistent with the conventional IR account sketched above. Indeed, it strongly suggests that the organizing principle of the medieval world order was 'sovereignty' rather than the 'heteronomy' one finds in so many conventional IR accounts.

This is not to suggest, of course, that the late medieval understanding of sovereignty was indistinguishable from its modern counterpart. It is, however, to make the case that the differences between the late medieval ideal of sovereignty and its early modern counterpart amounted to more of a variation on a theme than a difference in kind. If we push past the temporal othering and orientalizing of the medieval era that so thoroughly permeates the IR common sense to reflect on the actual ideas circulating in this period, we clearly see that a key – even defining – element of the late medieval world order was a historically distinct constitutive ideal of sovereignty that shared much in common with the one 'invented' by Bodin almost three centuries later.

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