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Keeping the State: Religious Toleration in Early Modern France and the Role of the State in Minority Conflicts[†]

After the end of the Cold War, and especially following the conflicts in the Balkans, minority issues have re-entered the European stage after a prolonged absence, and the question of minority rights in international politics has once more become a pressing and legitimate concern to both students and practitioners of international relations. With this revived interest in minority issues, one question that has reached the forefront of the agenda is whether states should still deal with ‘their’ minorities, or if the implementation and enforcement of minority provisions ought to be left to other international actors.

The aim of this paper, however, is not to study contemporary minority issues, but rather to reflect on the historicity of the issue. When arguing about why actors others than states should have responsibility of imposing and enforcing minority provisions, it is important to understand the relation between minority provisions and the state, and how and why the state emerged as the guarantor of minority rights in the first place. This, in turn, requires an appreciation that both the formation and consolidation of the state, and the emergence of principles of toleration were the result of a highly contingent historical process. By examining the case of religious toleration in Early Modern France, I hope to shed light on a number of these processes, thus providing an historically grounded understanding of certain aspects of minority conflicts and their resolution. Such an understanding is in many ways essential to the way in which current conflicts and possible resolutions are perceived. To do so, however, is not to provide a blueprint for how minority conflict should be solved in the future. Uncovering the past does not, alas, provide clear-cut answers to present concerns. Rather, to borrow from John M. Hobson, I wish to stress the importance of history “... as a means to *rethink* theories and *problematise* the analysis

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of the present ...” For, as Hobson adds, “[i]gnoring history does not simply do an injustice to [history]. Most significantly, it leads to a problematic view of the present.”¹ Thus, on the basis of an understanding of how minority rights were first introduced in Europe, I hope to identify certain issues and dilemmas that must be taken into account in any contemporary discussion of the future role of the state *vis-à-vis* other international actors.

I. THE CONTEXT OF THE WARS OF RELIGION

One question that needs to be addressed before turning to the subject matter of this paper is the question whether or not one can already speak of a system of modern states in sixteenth-century Europe. Whereas orthodox International Relations dates the emergence of the modern state and state system to the Peace of Westphalia in 1648, Historical Sociology provides a different story.

Where Hedley Bull argues that it was only around the early seventeenth century that the European system became fully integrated,² Charles Tilly argues that already by the end of the fifteenth century,

... in Europe something resembling the state system we know today was taking shape. The participants moreover, were increasingly not city-states, leagues, or empires, but national states: relatively autonomous, centralized, and differentiated organizations exerting close control over the population within several sharply-bounded contiguous regions.³

A crucial factor accounting for such a development is the spread of diplomacy as a means to foreign policy. Although an Italian invention of the fifteenth century, permanent diplomacy had become commonplace throughout Europe a century later.⁴ In 1494, Naples had sent resident ambassadors to Spain, England, and Germany in order to obtain help to counter the French.⁵ The ensuing Holy League concluded in 1495,⁶ “... was, in fact, a European-wide coalition against France, the first decisive drawing together of the major states of Europe into a single power system. Italian politics were transferred to a wider arena.”⁷ The French military maneuvers were beginning to have system-wide repercussions. In the first decade of the sixteenth

¹ John M. Hobson, “What’s at Stake in ‘Bringing Historical Sociology *Back* into International Relations?’ Transcending ‘Chronofetichism’ and ‘Tempocentrism’ in International Relations”, in S. Hobden and J.M. Hobson (eds.), *Historical Sociology of International Relations* (Cambridge, 2002), 3–41, at 5 (emphasis in the original).

² Hedley Bull, *The Anarchical Society* (London, 1977).

³ Charles Tilly, *Coercion, Capital, and European States, AD 990–1992* (Cambridge, 1992), 164.

⁴ Garrett Mattingly, *Renaissance Diplomacy* (Mineola, N.Y., 1988), 83.

⁵ *Ibid.*, 105, 132.

⁶ Emperor Maximilian I, and Ferdinand and Isabella were amongst the signatories in 1495, but as suzerains of Italian city-states. When Henry VII of England adhered a year later, “... any pretense that the new league was just an Italian affair was dropped.” *Ibid.*, 124.

⁷ *Ibid.*

century, “[Europeans] were entering a period in which the major realignments of boundaries and sovereigns throughout the continent occurred at the ends of wars, under the terms of agreements joined by multiple states.”⁸

Illustrating this is the Peace of Buda (1503). Ranking as the first great international settlement of modern times, it included Turkey, Moldavia, Ragusa, Venice, the Papacy, Bohemia-Hungary, Poland-Lithuania, Rhodes, Spain, Portugal, and England.⁹

However, politics were still of a distinctly dynastic character: “National interest was still too vague a concept to guide or even to excuse the policies of the monarchies.”¹⁰ Nevertheless, one important and distinctly modern element of the emerging system was namely the principle of the balance of power.¹¹ “The League of Cognac [1526] is one of those points in sixteenth-century diplomatic history at which the ‘balance of power’ is said to have been invented, the point at which national interest replaced dynastic interests as the main motive of European politics.”¹²

By the mid-sixteenth century, the unity characteristic of the *respublica Christiana* had given way to the fragmentation of Europe into distinct territorial units of different confessions. As the Pope had lost his authority in religious matters, the Emperor had now also lost his ability to ensure the internal peace of Christendom. Through this fragmentation, a mosaic of independent polities was growing out of the previously unified structure of authority and power, and religion had to give way as organizing pillar of political life between states in Europe. In its place came the sovereign state. With the Reformation, the religious unity between and within states moved towards fragmentation. Eventually, confessional fragmentation led to disagreements about the nature of membership to the state, and to civil war. As these conflicts intensified, the granting of concessions to religious minorities was increasingly seen as the sole way to return civil peace to states. States increasingly came to believe that enforcing confessional unity could only come at the expense of the state, and limiting its autonomy became the way to save the autonomy of the state altogether.

But just as the disruptive consequences of the religious wars on the state were recognized, so were their potentially disruptive consequences on the state system. The granting of certain concessions in order to appease religious minorities was thus

⁸ Tilly, *Coercion, Capital, and European States ...*, 163–4.

⁹ *Ibid.*, 162.

¹⁰ Mattingly, *Renaissance Diplomacy*, 140.

¹¹ Even though Mattingly notes that although the sixteenth century witnessed episodes between 1494 and 1599 when the principle is clearly applied – e.g. the Holy League (1495), or the League of Cognac (1526) – as the combination of a group of powers against an apparent victor, he nevertheless warns that “... it is hard to be sure if the sixteenth century appreciated the full beauty of a balanced system. It is harder because none of the arrangements lasted ...” *Ibid.*, 141. It has to be noted, however, that although these arrangements did not last as long as they were intended to, they were still expected to last quite a long time. The Holy League, for instance, was to last twenty-five years.

¹² *Ibid.*, 150.

increasingly seen as necessary to maintain the still fragile order of states as well. Moreover, Protestant states became concerned about the Protestant minorities in Catholic states, and *vice versa*. But just as the institutions of the state had emerged as the main guarantor of these concessions, the question that emerged was who was to secure the adherence of states to their commitments to their own minorities. In other words, what was to replace the Pope and the Emperor in securing the peace of Christendom, and states' compliance with their agreements?¹³ As special constitutional rights granted to religious minorities were emerging as both a prudential and an ethical norm, the issue of who had *de jure* authority to intervene should these not be respected by states proved to be a difficult question for the society of states. As a matter of fact, how to fill the vacuum left by the Pope and the Holy Emperor would be one of the chief concerns of students and practitioners of international politics for centuries after the fragmentation of the feudal arrangements of the *respublica Christiana*. As this article argues, there was no one left but states to enforce these norms; however, states not having any *de jure* authority to do so, this enforcement could only happen on an *ad hoc* basis, and has remained largely dependent of states' willingness to do so.

II. SAVING THE STATE: RELIGIOUS TOLERATION IN EARLY MODERN FRANCE

The treatment of religious minorities in sixteenth-century Europe was among the first cases of concessions made to minorities at the expense of sovereign authority. Although, as Quentin Skinner argues, a growing number of humanists came to believe that religious toleration and the freedom of conscience were issues of principle rather than political necessities,¹⁴ the underlying assumption behind early religious toleration was that religious uniformity could only be enforced at the expense of domestic order.

As such, support for toleration was intrinsically unwilling during the period of the Reformation. For, while toleration accepts difference, it does not welcome it as a

¹³ If the Pope or Emperor did not always possess the *de facto* power to enforce the compliance of the different rulers of the Christian world, they nevertheless always claimed the *de jure* authority to do so. As Gierke argues, the Pope was "... entitled and bound to exercise a direct control of temporalities whenever there [was] occasion and reasonable cause for this intervention". Otto Gierke, *Political Theories of the Middle Ages*, transl. by F.W. Maitland (Bristol, 1996), 14. Furthermore, "[i]n case of vacancy, or if the temporal Ruler neglect[ed] his duties, the immediate guardianship of the Empire f[ell] to the Pope. And lastly, it [was] for him to judge and punish Emperors and Kings, to receive complaints against them, to shield the nations from their tyranny, [and] to depose rulers who are neglectful of their duties ..." Ibid., 15. For more on the arrangements of the *respublica Christiana*, see Gianfranco Poggi, *The State: Its Nature, Development and Prospects* (Stanford, 1990); Hendrik Spry, *The Sovereign State and Its Competitors* (Princeton, 1999); and Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton, 1970).

¹⁴ Quentin Skinner, *The Foundations of Modern Political Thought, Volume Two: The Age of Reformation* (Cambridge, 2000), 244.

value in itself. Accordingly, toleration in the sixteenth and seventeenth centuries must be seen as something different from embracing pluralism or multiculturalism, both of which regard coexistence as a sign of health rather than something that has to be suffered as a regrettable necessity.¹⁵

The granting of minority rights in the mid-sixteenth century was thus not a matter of principle or norms, but intrinsically linked to prudential concerns over the continuous existence of the state. In France, this view came to be known as the *politique* defense of toleration, a position whose leading exponent was the chancellor Michel de l'Hôpital.¹⁶ As de l'Hôpital argued in 1561, rights granted to religious minorities at the expense of sovereign authority was "... not a question of settling religion, but of settling the State ... even an excommunicated person does not cease to be a citizen."¹⁷ As such, the early edicts on toleration in France were ratified by the *parlements* not because they agreed with toleration as a principle, but because of the existential threat religious conflict had come to pose to the state.¹⁸ The preambles of the first edicts on toleration clearly state that toleration was a policy of last resort. After having attempted everything else ("quelques remedes que nos Prédécesseurs ayent tenté"¹⁹) toleration was seen as the last possibility to save the unity and continuous existence of the state. In the following passages, I will examine the arguments in favour of religious toleration underlying the French Edicts on Toleration, all passed between 1561 and the Edict of Nantes, in 1598.

The 1559 peace settlement of Cateau-Cambrésis marks a shift in European international politics. With the resignation of Charles V to his son Philip II along with the detachment of the crowns of Spain and the Netherlands, the Holy Roman Empire was now divided between two branches of the Habsburgs. In many ways, the peace settlement provided hope that relations between states would evolve into more peaceful relations than in the past. It gave the impression of creating some sort of equilibrium, or balance. The Empire was now no longer ruled from Spain, France had resisted all attempts at being conquered, but then again, had not managed to conquer Italy herself, and England was free of past involvements under a new queen. In short, Cateau-Cambrésis left few larger claims adjudicated. Finally, as both Philip II and Henri II of France seemed to have agreed to put down religious

¹⁵ Theodore K. Rabb, "Toleration During the Age of Reformation", in M.R. Thorp and A.J. Slavin (eds.), *Politics, Religion and Diplomacy in Early Modern Europe: Essays in Honor of De Lamar Jensen* (Kirksville, 1994), 305–20, at 307.

¹⁶ Skinner, *The Foundation of Modern Political Thought*, 241–54.

¹⁷ Rabb, "Toleration During the Age of Reformation", 312.

¹⁸ The assumption underlying the edicts was clearly that only a policy of toleration could appease the kingdom: "... cette presente Ordonnance, qui est faite pour la conservation du repos general & universel de nôtre Royaume, & pour obvier à tous troubles et seditions ..." J. Du Mont (ed.), *Corps universel diplomatique du droit des gens, contenant un recueil des traitez ...*, vol. 5, part 1 (Amsterdam/The Hague, 1728), 90. Or as Charles IX added: "Par nôtre Ordonnance ... fait pour le repos & pacification de nos Sujets, & pour appaiser & faire cesser les troubles & seditions que suscite en cetui nôtre Royaume la diversité des opinions qui regne à nôtre Religion." *Ibid.*, 91.

¹⁹ *Ibid.*

heresies at any price within their own kingdoms, this had provided a tacit understanding between them that until they succeeded, dynastic antagonisms would have to wait.²⁰

III. THE PROTESTANT REBELLION: INTRODUCING TOLERATION

Up until 1562, hostilities and open conflict were only episodic. However, Protestantism was being provided with a more militant ideology under the leadership of Jean Calvin. Warfare nevertheless broke out as the Duc de Guise's private army massacred a Huguenot congregation at Vassy in March 1562, which in turn prompted the Prince de Condé to mobilize on behalf of the Huguenots. Hitherto, Catherine de Medici, the mother of young Charles IX, who had assumed the regency which had been openly coveted by the Guises, had attempted to stifle the unrest through measured toleration. While Catherine realized that she needed a policy of toleration in order for the Huguenots to keep the Guises' influence in check, she was also aware that it may have been the only way to appease the violence of the wars. The Huguenots, on the other hand, had reason to believe that the efforts towards a policy of toleration in the early 1560s would succeed, as a number of influential people had come to assume that attempts to reimpose religious uniformity would seriously threaten the existence of the state.

From the first edict on toleration in France, the *Edit sur les moyens les plus propres d'appaiser les troubles & séditions pour le fait de la Religion* of 17 January 1562, the idea of toleration was linked to the idea of order. While the edict ordained by the young Charles IX, prepared by the *politique* chancellor Michel de l'Hôpital, and adopted by the *Parlement de Paris* on 17 January 1562 effectively suspended religious persecution in France for a short period, it also showed the difficult relation between pluralism of worship and toleration of others. Toleration, Michael Walzer reminds us, is the "... least we can do for our fellows, the most minimal of their entitlements."²¹ As such, however, it is also not necessarily something people welcome. Toleration is different from full acceptance. It is based on the realization of the *necessity* of some arrangement for coexistence.

The first thing that strikes the reader when reading the 1562 edict, is the footnote attached to the title commenting on the *Parlement's* disagreement with the content of the edict: "Le Parlement eut bien de la peine de se resoudre à vérifier cet Edit. Il falut le lui ordonner par deux fois; & il declara qu'il ne le faisoit que pour obéir au Roi, ceder au tems, & par provision."²²

Consequently, it was only due to the authority of the king that the *Parlement's* realized that something close to freedom of worship was necessary for the peace of the kingdom.²³ The note also bears witness to the increasing authority of the

²⁰ Mattingly, *Renaissance Diplomacy*, 163–6.

²¹ Michael Walzer, *On Toleration* (London, 1997), xi.

²² Du Mont, *Corps universel ...*, 89.

²³ Robin Briggs, *Early Modern France 1560–1715* (Oxford, 1998), 15–6.

monarch. Although the *Parlement* disagrees with the content, after having being ordained to ratify it twice, they did obey, and emphasized that to obey the king was the main reason behind their acceptance of the edict.

What interests us for our present purposes is less the detailed content of the edict, as the reasons given for adopting them and what type of religious freedom it advocated. The content very much bears witness to the difficulties encountered in imposing a policy of peaceful coexistence between parties who disagreed fundamentally on what they believed to be crucial issues. As such, the people of the *nouvelle Religion*, if allowed to practice in peace outside of cities: "... lorsque ceux de ladite Religion s'assembleront hors desdites Villes, pour le fait de leur dite Religion: [Juges, Magistrats & autres personnes] n'ayent à les y empêcher, inquieter, molester, ne leur courir sus en quelque sorte ou maniere que ce soit."²⁴

The general wording of the edict, and the duties of those of the *nouvelle Religion* nevertheless clearly denote the fact that France was still a Catholic country: "Et sans que par nôtre-dite Ordonnance & la presente Déclaration [the accompanying *Déclaration & interpretation du Roi*], nous ayons entendu & n'entendons approuver deux Religions en nôtre Royaume, ains une seule qui est celle en nôtre sainte Eglise, en laquelle nos Predecesseurs Rois ont vècu."²⁵

The reasons for this edict to be proclaimed were clearly the maintenance of the peace of the kingdom. As the preamble said: "... quelques remedes que nos Prédecesseurs ayent tenté pour y pourvoir, tant par la rigueur & severité des punitions, que par douceur ...",²⁶ which clearly indicates that religious toleration is a policy of last resort. After having attempted everything, both punitive measures, and less harsher policies, toleration – if minimal – was nevertheless clearly seen as the last possibility to maintain order: "... cette presente Ordonnance, qui est faite pour la conservation du repos general & universel de nôtre Royaume, & pour obvier à tous troubles et seditions ..."²⁷ Or, as it is put in the attached *Déclaration & interpretation du Roi*: "Par nôtre Ordonnance ... fait pour le repos & pacification de nos Sujets, & pour appaiser & faire cesser les troubles & seditions que suscite en cettui nôtre Royaume la diversité des opinions qui regne à nôtre Religion."²⁸ The edict of 1562 thus not only shows how religious toleration and a certain measure of concessions to those of the *nouvelle Religion* was perceived as necessary and also the solution of last resort to maintain order within the kingdom. The passing of the edict through the *Parlement* in spite of the resistance encountered by the monarchy also bears witness to the growing authority of the king.

However, civil unrest was to return when the crown abandoned its moderate policies around 1567. As the crown's military campaign was about to fail due to

²⁴ Du Mont, *Corps universel* ..., 90 (emphasis added).

²⁵ *Ibid.*, 91.

²⁶ *Ibid.*, 90.

²⁷ *Ibid.*

²⁸ *Ibid.*, 91.

lack of funds, the young Charles IX and his mother Catherine de Medici once again turned to the moderate policies of the *politique* to appease the country.

The Peace of St. Germain and the *Edit pour la Pacification des Troubles arrivez à l'occasion de la Religion* of August 1570 thus resemble the Edict of 1562 in many ways. One difference, however, was that they placed much less emphasis on the rationale behind these moderate policies. Where the edict of 1562 had to be justified at length, the logic behind the argument was now more common, and, although it was mentioned in the preamble, it was not mentioned again throughout the document:

Considerans les grands maux & calamités avenus par les troubles & Guerres desquelles nôtre Royaume a été longuement & est encore de présent affligé; & prevoyans la desolation qui pourroit avenir si ... lesdits troubles n'étoient pas promptement pacifiez ... remettre et faire vivre nos Sujets en paix, union, repos & concorde, comme toujours a été nôtre intention ... ordonnons ... ce qui s'ensuit.²⁹

In addition, the monarchy seems to have become 'wiser', having gained experience in dealing with the religious discords, and now accepting that there did not seem to be any way to resolve the disputes but to allow for a certain degree of religious freedom. Although full freedom of practice was not granted, the references to a possible future without toleration ("prevoyans la desolation qui pourroit avenir") already announced the fact that internal peace and order could only be possible with a certain degree of toleration.

Furthermore, while freedom of practice was still relatively limited, full freedom of conscience was granted to all subjects:

Et pour ne laisser aucune occasion de troubles & différens entre nos Sujets, leur avons permis & permettons, *vivre & demeurer par toutes les Villes & Lieux de cettui nôtre Royaume, & Païs de notre obeïssance*, sans être enquis, vexez ni molestez, n'astrains à faire chose pour le fait de la Religion contre leur conscience ...³⁰

As we can see, not only were those of the *Religion qu'ils disent Reformée* allowed to live anywhere, but the edict also granted them the freedom not to be forced to act against their conscience in religious matters ("n'astrains à faire chose pour le fait de la Religion contre leur conscience").

But these provisions were not sufficient to avoid the 1572 massacres of Huguenots. After the Massacre of St Bartholomew's Day in August 1572, the Huguenots could not fully trust the Valois monarchs anymore. Although the Huguenots seem to have abandoned their attempts to win the Court over to moderate policies again, a powerful *politique* party once again emerged at the Court. After Charles IX's death

²⁹ Ibid., 180.

³⁰ Ibid. (emphasis in the original).

in 1574, Henri III had only little success in appeasing the unrest until he was forced to surrender by the coalition which had emerged between the *politiques* and the Huguenots.³¹

The Peace of Monsieur gave the Protestants what Robin Briggs calls "... the most favorable settlement the Protestants were ever to obtain."³² Understandably so, as the king was in no real position to negotiate. However, limited military successes in 1577 led to a new settlement, the Peace of Bergerac, with a subsequent new edict.

The *Edit de paix au sujet de la Religion* of September 1577 nevertheless seems to have reached further in the direction of religious toleration: "... Avons permis & permettons l'exercice libre, public & general de la Religion pretenduë reformée par toutes les Villes & Lieux de nostre Royaume ... sans restrictions de temps & persones, ne pareillement de Lieux & Places ..." ³³

In addition to this, past struggles and disagreements were 'ordered away', and were to become forgotten "comme de chose non advenuë". Where the previous edict already seemed to realize that the religious differences had come to stay, this one goes even further, by pretending that the state of peaceful coexistence has always existed, erasing, as it were, the memory of religious persecutions. As a matter of fact, the new religion – although it was still emphasized that France was to remain a Catholic state – was from then on being accepted in the official language of the kingdom. From the people of the *Religion qu'ils disent reformée*, "[e]n tous Actes & Actions publiques où sera parlé de ladite Religion, sera usé de ces mots, Religion pretenduë reformée."³⁴ From being a group of people claiming to profess a reformed religion, the claims of the religion itself were taken up in the official language of the state.

Furthermore, even if the crown did not acknowledge responsibility for the St Bartholomew's Day Massacre, they nevertheless took distance from it, emphasizing that it had happened at "notre tres-grand regret & déplaisir".³⁵ Finally, full equality of opportunity was granted to the Huguenots, who would with the edict even have representation in official positions. What the document finally shows is that the longer the unrest lasted, the more accepted toleration seemed to have become as a solution. The edict introduced one of the longest periods of peace during the French wars of religion. Henri III had successfully disbanded the Catholic League, which had appeared on the scene a few years earlier, by taking its command.

Although the edict was ordained as the king was in a stronger position at the Peace of Bergerac, the documents available indicate that there was a strong willingness on the part of the monarch to accommodate the Huguenot party. In fact, the edict included a series of secret articles,³⁶ which all in one way or another gave

³¹ Briggs, *Early Modern France* ..., 23.

³² Ibid.

³³ Du Mont, *Corps universel* ..., 266.

³⁴ Ibid., 267.

³⁵ Ibid., 268.

³⁶ Ibid., 308–11.

Huguenot leaders assurances and guarantees as to their possessions and rights, being especially concerned with returning rights, possessions or benefits (e.g. positions) which had been wrongfully taken or seized during the St Bartholomew's Day Massacre on 24 August 1572.

Also proving that the crown was quite willing to accommodate the Huguenots, is the fact that a conference was held between Huguenot leaders and the crown at the request of the former:

Pour faciliter l'exécution de l'Edit dernier de Pacification ..., & éclaircir & resoudre les difficultez qui sont intervenuës, & qui pourraient encore retarder le bien & effet d'iceluy Edit: A été sur la Requête, Supplication & Articles presentez par ceux de la Religion pretenduë Reformée, resolu & arrêté ce qui s'ensuit ...³⁷

Among other things, the crown acknowledged that the previous edict might not have given the Huguenots enough places for public worship, and was willing to increase these at the Protestants request. As it was, the Protestants were granted fourteen cities ("*Villes & Places gardées par lesdits de la Religion*") which they would control and guard, and in which the Protestant religion was to be, if not the official, at least the main form of worship. Although Catholics were to be allowed all rights in these cities, the king of Navarre, the main Huguenot leader, was allowed to levy a limited amount of taxation.³⁸ The garrisons in these cities were nevertheless to be ended within a period of six months from the signature of the conference articles ("*faire vuidier toutes Garnisons ... desdites quatorze Villes*").

The kingdom was to remain pacified only for a few more years. 1584 was to see the renewal of hostilities on a large scale, with the reappearance on the stage of the Catholic League, this time encompassing more than the League of 1576, its membership being extended to artisans, the lesser bourgeoisie, and municipal officials.³⁹ In a sense, the violence that started in 1584 can be seen as the Catholic counterpart or equivalent to the Protestant rebellion of 1560–77.

IV. THE CATHOLIC REBELLION: ENFORCING TOLERATION

On 31 December 1584, envoys of the Catholic League and Philip II of Spain met in Joinville, agreeing on a treaty against Henri III. The parties to the treaty all agreed that:

... les Sectes & Heresies de long-tems dispersées par la Chrétienté aient pris tel accroissement, que grande partie d'icelle s'en trouve gâtée & infectée ... Et qu'au lieu qu'entre les Princes Chrétiens, lesdits Sectaires & Herétiques devroient être traités & tenus comme Ennemis; ce néanmoins du côté de la France, & d'aucuns

³⁷ Ibid., 337.

³⁸ Ibid., 340.

³⁹ Briggs, *Early Modern France* ..., 24–5.

François, ils aient été tellement supprtez, favorisez ... qu'ils n'auroient pu être châtiez, punis & reduits, comme il appartient par tres-haut, tres-excellent & tres-puissant le Roi Catholique leur Souverain.⁴⁰

In addition to agreeing that the French policies of toleration had gone too far, and that the French sovereign ought to have acted according to his Christian duties rather than in the interest of pacification (or that pacification ought to have been the result of religious persecution and abolition of the Protestant religion), the signatories alleged that Catholics in many places were abandoned by the crown, left to the "... bon plaisir & domination des Heretiques."⁴¹ They were also concerned about the death of Anjou, which had made the Huguenot leader, Henri of Navarre, the apparent heir to the throne; a fact that would without a doubt "... preparer de longue-main l'entiere ruine de l'Eglise de Dieu."⁴² Accordingly, immediate action was necessary. If Henri III was to die childless, it would be too late to act and avert "de certains dangers, dont le present état des affaires menace, non seulement la France, mais generalement toute la Chretienté, de quoi l'on s'aperçoit dès maintenant à vue d'œil".⁴³

As has become apparent from this short treatment of the treaty, there was a great divide between the crown and the more fanatic Catholics. It is noteworthy that nowhere in the treaty is the *Religion pretendue Reformée* mentioned. Instead, there is ample mention of the *Sectes* and *Heretiques*. On the other hand, the treaty was not meant to be an edict on toleration either:

Seront bannis par Edit public, & tous autres moiens possibles, de tout le Roiaume de France, sans excepter aucun lieu d'icelui, tous exercices de cette Heresie, sans qu'il en soit jamais permis autre, que celui de la vraie Religion Catholique, Apostholique, & Romaine ... et serons poursuivis ceux d'entre eux [the Heretics], qui ne se voudront reconnoître & remettre sous l'obeissance de l'Eglise Catholique, Apostholique, & Romaine, à toute outrance & jusques à les aneantir du tout.⁴⁴

It is interesting to note that the wording of the document is not directed explicitly against the French monarch. For, as it was also out of loyalty to their country and concern over the future monarch that the League had come together, they could not conceive of a direct verbal attack on Henri III. Although his policies were criticized at length, the document does not at any point question Henri III as the rightful sovereign. Most of the policies evoked in the treaty were to be implemented upon Henri III's death with the ascension of the Cardinal de Bourbon to the throne. Soon after the signature of the agreement, the League successfully took effective control

⁴⁰ Du Mont, *Corps universel* ..., 441.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid., 442.

⁴⁴ Ibid.

over most towns and provinces of central France, forcing the crown once again to give in to demands from the religious groups, although this time from the Catholics.

The *Articles accordez à Neumours, au nom du Roi de France Henri III, par la Reine sa Mère, avec les Princes et Seigneurs de la Ligue en presence du Duc de Lorraine* subsequently ordained as an edict, were this time radically different from the preceding edicts on toleration and pacification. What is perceived to be the issue is no longer the violent unrest and civil war within the kingdom, but the position of the Catholics as a result of the policies of toleration. As such, the edict begins forcefully by declaring that: "... tout l'exercice de la nouvelle Religion sera defendu, & declaré qu'il n'y aura doresnavant en ce Royaume autre exercice de Religion, que de la Catholique, Apostholique & Romaine."⁴⁵

Within a ten-month period all Protestants were either to convert to Catholicism, or leave the kingdom, and "... à faute de ce faire, seront constraints à sortir hors du Royaume, sous peine de confiscation de Corps & de Biens." *Heretiques* of all ranks were also declared "... incapables de tenir Benefices, Charges publiques, Offices, Estats & Dignitez."⁴⁶

During the following years, open hostilities re-emerged. The king, anxious to weaken the League, nevertheless had to fight the Huguenots, led by the king of Navarre. Military results did not give any of the parties the upper hand, although the king's strategies tended to backfire against him, thus strengthening the League. That said, the situation was worsening for Henri III, with his loss of control over Paris in May 1588. The League, which now commanded unprecedented popularity and power, was nevertheless still anxious to compromise with the king, as his authority still commanded strong loyalty, and the political alternatives were not found to be viable. As a result, Henri III gave in to the League's demands, summoning the Estates General at Blois in the autumn of the same year. However, as the English victory over the Armada showed cracks in the hitherto invincible Spanish forces, external support for the League was starting to fade. While the estates were generally willing to eradicate the Protestants, there was at the same time strong resistance against financing the project.

Finally, the death of Catherine de Medici, who had been advocating temporizing policies all along, triggered a change in the royal strategy. On 23 and 24 December 1588, the leaders of the League were either murdered or imprisoned by the crown, producing a realignment of royalists around the country against the extremists of the League. Yet, the League fought back, forcing the royalists into an alliance with the Huguenots, still led by the King of Navarre. With Henri III's assassination, his successor Henri IV (the King of Navarre) took over the control of the army, but was forced to abandon the military fight against the League. With a Huguenot king who had declared his intention to preserve the Catholic faith, but who was nevertheless delaying his own conversion, the Spanish again decided to intervene militarily.

⁴⁵ Ibid., 453.

⁴⁶ Ibid.

V. CONSOLIDATING TOLERATION: THE CROWNING AND RECOGNITION OF HENRI IV

The Huguenot leader's ascension to the crown as Henri IV, on 4 August 1589, caused some fear in the Huguenot camp. In his initial statement, he declared that: "Nous Henry par la grace de Dieu Roy de France & de Navarre prometons & jurons ... à tous nos bons & fidelles subjects, de maintenir & conserver nostre Royaume dans la Religion Catholique & Romaine dans son entier."⁴⁷

Furthermore, the king of Navarre now declared his willingness to be instructed in his actions by the general national Catholic Council, which was to be held six months later. Further cause for fear was given by his promise to secure the Catholic faith in all towns and cities which were to be regained from the League.⁴⁸ We can see in this statement how the newly crowned king, almost abandoning his earlier followers, had to maneuver in order to gain the loyalty of his Catholic subjects and princes. The Huguenots, however, were not forgotten. Although Henri IV was not willing to give the Protestants more concessions, he nevertheless confirmed the validity of earlier edicts, as well as declaring that Protestant cities and towns would not be given back to the Catholics: "... sauf & réservé celles [villes], qui par les susdicts articles furent réservées par le dit feu Sieur Roy à ceux de la Religion reformée ..."⁴⁹

On the same day, Henri's declaration was met with an *Acte* by which the *Princes, Ducs, Pairs & autres Seigneurs du Royaume de France* accepted the former Huguenot leader as their legitimate heir to the crown: "... reconnoissons pour nostre Roy & Prince naturel selon les Loix fondamentales de ce Royaume Henri IV & lui promettons tout service et obeissance *sur la promesse & serment qu'il nous a fait cy dessus escripts* ..."⁵⁰

In addition, they decided to send a delegation to the Pope, in order to explain the reasons for their acceptance of the King of Navarre.⁵¹ What was expected from the Pope was not only confirmation of Henri IV as legitimate ruler of France, but also guidance as to how best to serve "... le bien de la Chrestienté, utilité & service de sa Majesté, que conservation de ce Saint Estat & Couronne en leur entier."⁵²

But if the Pope's blessing was necessary in order for the sovereign to be recognized as legitimate in the international sphere, this episode shows how matters of state

⁴⁷ J. Rousset, *Supplement au corps universel diplomatique du droit des gens, contenant un recueil des traitez ... qui ont echapé aux premieres recherches de M. Du Mont*, vol. 2, part 1 (Amsterdam, The Hague, 1739), 208.

⁴⁸ "Nous promettons en outre que les villes, places & forteresses, qui seront prises sur nos rebelles. & reduites par force ou autrement en notre obeissance, seront par nous commises au gouvernement & charges de nos bons sujets catholiques & non d'autres ..." Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ "... que de nostre part soient deleguées quelques notables personnages *vers nostre Saint Pere le Pape*, pour lui représenter particulièrement les raisons." Ibid.

⁵² Ibid.

had taken over in importance in domestic politics. If the *de jure* authority provided by the Pope could not be obtained, as was the case here, even Catholics were willing to disregard the Church's commandments for the needs of the state. As such, what the princes of the crown provided Henri IV with, was not only *de facto* obedience; it was a declaration of his *de jure* right to rule.

The delegation sent to the Vatican did not achieve what was hoped for. But matters of state had risen in importance over matters of religion and the *Parlements* of the kingdom proclaimed a number of *arrests* following Gregory XIV's excommunication of Henri IV of 1 March 1590, declaring the invalidity of said Papal Bull. On 13 August 1591, the *Parlement de Normandie* ordained an *Arrest* which was subsequently confirmed *mutatis mutandis* by all *Parlements* of the kingdom.⁵³ The *arrest* was introduced strongly by mentioning a previous *arrest* of the same *Parlement* declaring it illegal to receive any orders from the Pope, or to publish or read, in private or public, any of the *mandements, actes, or expéditions* of the said "soy disant" Pope under threat of being tried for "crime de leze Majesté". Furthermore, the *arrest* was a strong attack on the idea that there is anything in the Holy Scripture denying the legitimacy of a heretic ruler: "Mais outre cette naturelle inclination [to respect and honor our kings], il n'y a rien si exprés en toute l'Escriture saicte ... que de faire prieres publiques & particulieres, pour la prosperité des Rois & Empereurs, bien qu'ils fussent infideles & payens."⁵⁴

As the *parlements'* argument continued, the rebels of the League through their scandalous behavior and dishonor of the legitimate king were disturbing the order of the kingdom ("renverser tout ordre"). Declaring "ce Royaume ... exempt de toutes pretenduës excommunications & interdits",⁵⁵ they denounced and condoned "... le pretendu Pape Gregoire XIV, d'entreprendre en ce Royaume chose si temeraire & monstreuse, que l'envoy & publication de certains Libelles diffamatoires, scandaleux, & pleins d'impieté, sedition, & heresie, sous masque de Religion."⁵⁶

Furthermore, they declared concerning the Pope's envoy in France that "... pour l'observation de l'ordre judiciaire ordonner que ledit Marsilius Landrianus, pretendu Nonce, sera, comme ennemy public, & boutefeu couru & poursuivi, prins & apprehendé, vif ou mort, & estre présenté à justice ..."⁵⁷

Accordingly, all subjects of the kingdom were ordered not to obey any ecclesiastics who had accepted the excommunication of the king, as these were considered "perturbateurs & intracteurs de la paix publique". This again shows how the order and peace of the state was decreasingly seen as dependent on religious unity – although the *parlements* also acknowledged their duty to maintain the Catholic religion – and increasingly relied on obedience to the king. Gregory XIV's Bull was

⁵³ Ibid., 211.

⁵⁴ Ibid.

⁵⁵ Ibid., 212.

⁵⁶ Ibid.

⁵⁷ Ibid.

thus declared to be: "... nulle, abusive, scandaleuse, & injurieuse, tendant à Sedition, & trouble de tout l'Estat Chrestien contraire à la parole de Dieu ... remplie d'erreur, imposture, & impieté: Et ordonné qu'elle sera lacerée & bruslée devant la porte du Palais, par l'executeur de la haute justice."⁵⁸

As if this were not sufficient, they continued by declaring that anyone entering in contact in whatever way with Rome shall be declared "ennemis de l'Estat", and that

... ledit Gregoire XIV, soy disant Pape XIV. de ce nom, ennemy du Roy, de l'Estat de la France, & de la paix de la Chrestienté, troublant la Religion Catholique, Apostholique & Romaine, & participant à la Ligue & conjuration faite, tant à l'encontre du Roy à present regnant, que du feu Roy Henri III.⁵⁹

But secular courts were not the only ones to denounce the Pope in these matters. The Catholic ecclesiastics denounced the authority of said Bull on 21 September 1591, although not going as far as denouncing the authority of the Pope altogether. Accordingly, their declaration against "*certaines Bulles Monitoriales*" (emphasis mine) acknowledged that the Pope, having been "mal informé de l'estat des affaires en ce Royaume", had given in to the "pratiques & artifices des ennemis de cet Estat". They therefore also concluded on: "... l'impossibilite de l'exécution de la dite Bulle, pour les inconveniens infinis qui en ensuivroient au prejudice & ruine de nostre Religion."⁶⁰ It is fascinating to see how the Pope's Bull changed the climate in France, from the Catholics seeing the Huguenots as the main threat not only to the unity of the Catholic faith, but also the unity, peace and order of the state, to now emphasizing the need for cohesion and obedience to a heretic king. They thereby concluded by justifying their declaration, saying that it was intended that nobody should be "... circonvenus, abusez, ou divertis de leur devoir envers leur Roy, & leurs Prelats ..."⁶¹

VI. SECURING TOLERATION: HENRI IV'S ABJURATION OF PROTESTANTISM AND THE EDICT OF NANTES

Having watched the negotiations between the royalists and the League carefully, Henri IV abjured the Protestant faith on 25 July 1593,⁶² thereby effectively cutting the ground from under his enemies' feet. Although, as Briggs argues, "[t]he extremists could still claim that his conversion was insincere, and would only be valid when he was absolved by the Pope, nothing could stop the steady stream of desertions to the royal camp."⁶³

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid., 213.

⁶¹ Ibid.

⁶² Ibid., 224–5.

⁶³ Briggs, *Early Modern France* ..., 29.

The *Parlement de Paris* had a month earlier, on 28 June, confirmed Henri as the rightful heir to the throne. They agreed that:

... à ce que aucun Traité ne ce face pour transferer la Couronne en la main de Prince ou Princesse⁶⁴ Etrangers ... pour empecher que sous tout pretexte de la Religion, la Couronne ne soit transeferée en main étrangere, contre les Loix du Royaume ... & declare tous Traitez faits, & qui se feront cy apres pour l'Etablissement d'un Prince, ou Princesse estrangere nuls & de nul effect & valeur, comme fait au prejudice de la Loi Salique & autres fondamentales du Royaume de France.⁶⁵

But the conversion of Henri IV was not necessarily that straightforward. If the Pope's excommunication could be transgressed in matters of temporal authority, as shown above, it could certainly not be transgressed in matters of the faith. The ecclesiastics gathered in order to instruct the king in "la Doctrine & les Constitutions d'icelle Eglise"⁶⁶ nevertheless decided that because of the danger posed to the king's life by the war, he could not risk a journey to Rome.⁶⁷ The ceremony was thus to be undertaken by the Archbishop of Bourges.⁶⁸ The extent to which this was performed as anticipated, or if the French ecclesiastics expected a negative answer from Rome is unclear. It is a cunning argument, though, that circumvents the difficulties posed by the Pope's superior authority in spiritual matters.

Following Henri IV's conversion, the League rapidly disintegrated not only because of the conversion itself, but also because of the king's generous and liberal terms offered to the Leaguers. In an edict of November 1594, the king thus offered the leaders of the League: "[nous] esteignons, supprimons & abolissons par cesdites presentes la memoire de toutes choses qui se sont passées & advenuës, dés & depuis le commencement desdits presens troubles ..."⁶⁹

In addition, they would be able to keep most of their possessions, as the peace treaty between Henri IV and the Duc de Lorraine of 16 November 1594 shows.⁷⁰ It is telling that in the subsequent ratification of the said treaty by the *Parlement de*

⁶⁴ The insistence on prince or princess shows that the *Arrest* was really intended against the Spanish claims, as the transfer of the crown to a female was clearly against the laws of inheritance.

⁶⁵ Rousset, *Supplement* ..., 222.

⁶⁶ *Ibid.*

⁶⁷ Another reason for performing the absolution in France was the influence the League had in Rome, which made it difficult for the royalists to be heard by the Pope. As Henri IV later deplores when speaking of "... les ruses ordinaires de nos Ennemis, & leur puissance à Rome ..." Du Mont, *Corps universel* ..., 520.

⁶⁸ "... plusieurs grandes considerations, mesmement pour la necessité du temps, le peril ordinaire de mort à quel est sa Majesté exposé à cause de la guerre, & qu'elle ne peut aller ny envoyer commandement à Rome; & pour ne laisser une si belle occasion & tant importante à l'Eglise de la reunion d'un si grand Prince à icelle; fut arresté que l'absolution de l'excommunication luy seroit donnée par Monsieur l'Archevesque de Bourges ... selon la forme contenuë au Pontifical ..." Rousset, *Supplement* ..., 223.

⁶⁹ Du Mont, *Corps universel* ..., 508.

⁷⁰ *Ibid.*, 510-1.

Paris many articles were modified or rejected, as they were deemed "... trop prejudiciable au Roi, & aux Droits de la Couronne."⁷¹ The need for toleration and peaceful coexistence was thus not only perceived as important with regards to the Protestants, but the king considered it as important to satisfy even the Leaguers in order to obtain the peace and stability the people had for so long hoped for.⁷² The *Trêve générale de son Royaume* Henri declared on 25 September 1595,⁷³ was soon followed with an *Edit ... sur les Articles accordez au Duc de Mayenne pour la Paix en France* in January 1596. Praising God for the military victories given to him over the League, Henri stressed, though, that the victories gained through peaceful means were the ones really advancing the unity of his subjects.⁷⁴ Thus, when mentioning the leader of the League, Henri IV referred to him in terms even kinder than those required by legal conventions, as "notre tres-cher & tres-amé Cousin le Duc de Mayenne, Chef de son Party"⁷⁵ and even goes so far as to repay the debts Mayenne had incurred as a consequence of paying foreign troops to fight in the war.⁷⁶

However, the concessions made to the League and the desire to preserve the Catholic faith in the future did not override the king's desire for the conservation of the state. Accordingly, when mentioning his intention to "... procurer le bien & advancement de tout nôtre pouvoir [de la Religion Catholique]" he immediately interjected that this should not come at the expense of order and had to be done "[en] conservant neantmoins la tranquillité publique de nôtre Royaume."⁷⁷

With the Peace of Vervins with Spain, France finally reached a moment of rest, and the king was able to concentrate on internal policies of toleration again. If the Edict of Nantes of April 1598 did not necessarily end religious conflict, it nevertheless, as the last in a series of edicts on toleration, marked the end of armed conflict and civil war. Thus, although the edict did not go much further in granting rights to the Protestant minority, it still is important in the sense that after Nantes, toleration and coexistence became accepted by elites and people alike as the sole viable mode of living for the future.⁷⁸

⁷¹ Ibid., 512.

⁷² "Nous avons toujours eû une grande inclination au repos public, & un même désir de rentrer & vivre en paix, nous qui n'avons été armés que pour défendre & conserver l'Heritage à nous écheû par la grace de Dieu, & la Succession legitime de nos Ancêtres, d'heureuse memoire, sans avoir onques pensé ni eû dessein d'envahir le bien d'autrui. Et ne desirant non plus que de rentrer & vivre en paix avec les Princes Alliez & Conféderez de cette Couronne ..." Ibid.

⁷³ Ibid., 518.

⁷⁴ "Car s'il [Dieu] nous a souvent donné des Victoires sur ceux qui combatoient contre nous: il nous a encores plus souvent accreu la volonté, & donné les moyens, de vaincre par douceur ceux qui s'en sont rendus dignes. De sorte que nous pouvons dire n'avoir guerres moins avancé la réunion de nos Sujets, sous nostre obéissance, telle que nous la voyons acheminée aujourd'huy, par la grace de Dieu: par nostre clemence, que par nos armes." Ibid., 519–20.

⁷⁵ Ibid., 520.

⁷⁶ Ibid., 522.

⁷⁷ Ibid., 520.

⁷⁸ "Nous [the king] avons jugé necessaire de donner maintenant sur le tout à nosdits Sujets un Loy generale, claire, nette & absoluë, par laquelle ils soient reglez sur tous les differens qui sont ci-devant

As such, the Edict of Nantes carried much less emphasis than previous edicts on the need to reinstate Catholicism as the sole religion of the kingdom. Rather, although it still recognized Catholicism as the official religion of the state, it acknowledged the need to accept differences in belief among the population:

Mais maintenant qu'il plaît à Dieu commencer à nous faire jouir de quelque meilleur repos, Nous avons estimé ne le pouvoir mieux employer ... [qu']à pourvoir qu'il [Dieu] puisse être adoré & prié par tous nos Sujets: & s'il ne lui [Dieu] a plû permettre que ce soit pour encore en une même forme de Religion, que ce soit au moins d'une même intention, & avec telle regle, qu'il n'y ait point pour cela de trouble ou de tumulte entr'eux.⁷⁹

Moreover, in addressing the *Parlement de Paris* on the topic, Henri IV went much further in stressing the necessity of "... l'établissement d'un bon ordre & repos entre nos Sujets Catholiques, & ceux de ladite Religion pretenduë Reformée."⁸⁰

Finally, the edict was concerned with the status of French subjects abroad. As the edict now guaranteed that no one would be persecuted nor prosecuted on the basis of their conscience, Henri IV also pledged to do his utmost to guarantee the security and freedom of French subjects abroad:

Sadite Majesté écrira à ses Ambassadeurs de faire instance & poursuite pour tous ses Sujets; mêmes pour ceux de ladite Religion pretenduë Reformée, à ce qu'ils ne soient rechez en leur consciences, ni sujets à l'Inquisition; allans, venans, sejourrans, negocians & trafiquans par tous les Païs étrangers, Alliez & Confederez de cette Couronne ...⁸¹

These guarantees were not only of interest to the Protestant minority, who, now that there was peace with Spain, still had to fear the Inquisition if traveling abroad. As French foreign policy increasingly favoured relations with Protestant states, the Catholic subjects now also had to fear for their security when staying in countries allied with France. More importantly, though, this example shows how once toleration had become accepted in one country as the answer to religious disagreements, the idea spread abroad to other states. France was the first state to have proclaimed such extensive freedom of conscience for its subjects. Now it was asking other states to respect the liberty of conscience of its subjects. Indeed, it was also the first Catholic state to engage in relations with so-called 'heretic states' to such a degree.

But the most important aspect of the edict for our purpose here, is the fact that it acknowledged the need for clear constitutional guarantees for the Protestant minority. As such, the edict stipulated that Protestants were not to be judged by Catholic courts, neither in civil nor in criminal matters, but by the so-called *Chambres*

sur ce survenus entr'eux, & y pourront encore survenir ci-après, & dont les uns & les autres ayent su de se contenter, selon que la qualité du tems le peut porter." Ibid., 546.

⁷⁹ Ibid., 545.

⁸⁰ Ibid., 557.

⁸¹ Ibid., 556.

d'Edit.⁸² This constituted already a severe circumscription of sovereignty. It was by asserting their right to be the final judge in all cases, that the state-building monarchs had curtailed the authority other rulers may have claimed over their territory.⁸³ Now this sovereign authority could only be maintained at the cost of limiting it.

Finally, the edict went even further in restricting the sovereignty of the state. Not only did it allow the Huguenots to maintain garrisons in the cities they controlled, but it also gave them the right to levy taxes on behalf of the king.⁸⁴ As such, not only did the state grant Huguenots constitutional guarantees that the freedom of worship would be upheld, it also gave them full control over parts of its territory. As Roelofsen argues, the religious wars in France came to an end "... only at the price of allowing the Huguenots to constitute an independent military power, in fact a state within the state."⁸⁵

The story would not be complete without mention of the revocation of the Edict of Nantes. After Louis XIV had attempted to convert the Huguenots through force and bribery, the Edict was revoked in 1685. The measure, however, was subsequently admitted to be both a crime and a blunder. Rather than give Louis the credit he hoped for from abroad, it discredited him with both the Pope and the Emperor. In addition, it provoked the mass emigration of more than 250,000 Protestants who easily transmitted their bitterness to their hosts. At last, as the revocation proved more and more difficult to implement, it was not fully enforced in the entire state, especially in Alsace.⁸⁶

VII. EARLY MODERN MODES OF TOLERATION AND THE FUTURE ROLE OF THE STATE

A rhetoric similar to that which evolved in France is present in the texts of other early modern documents on toleration, such as the Swiss Peace of Cappel of 1531 or the Peace of Augsburg of 1555 between the Emperor and the estates of the Holy Roman Empire.⁸⁷

The early examples of religious toleration in the Holy Roman Empire are backed by a similar rhetoric. Thus, the early provision of certain arrangements perceived as just and progressive by the Protestant minority provided the Empire with a modicum of stability and order. Just as the official recognition of religious fragmentation became the sole way of saving political unity in France a decade later, granting a

⁸² Ibid., 552.

⁸³ Strayer, *On the Medieval Origins* . . .

⁸⁴ Du Mont, *Corps universel* . . ., 552, 557–8.

⁸⁵ Cornelis G. Roelofsen, "Grotius and the Development of International Relations Theory: The 'Long Seventeenth Century' and the Elaboration of a European States System", 18 *Grotiana* (1997), 97–120, at 101.

⁸⁶ Briggs, *Early Modern France* . . ., 147–8.

⁸⁷ For a more detailed account, see Olivier Christin, *La Paix de religion* (Paris, 1997).

modicum of religious freedom to the principalities and estates of the Empire was the only way to ensure its continuous existence.

However, if the underlying reasons for introducing official toleration of confessional unity were similar in most European states, the modes of toleration adopted varied from case to case. Whereas the Treaty of Augsburg, inspired by the principle of *cuius regio, eius religio*, sanctioned the right of the units of the Empire to decide their religion, individuals were not given these same rights. Individual freedom of conscience was restricted to the possibility of emigrating to a state or principality of their own confession. Thus, Augsburg sanctioned a modicum of confessional freedom for the constituents of the Empire: the *jus reformandi*, and the *jus emigrandi* for individuals. The solutions adopted in France also contained the tension between these two modes of toleration. While private freedom of conscience was granted for the whole kingdom, public worship nevertheless remained limited to certain cities.

Finally, through the imposition of religious toleration by treaties and edicts, states depoliticized the conflicts of confession, making them instead a matter to be decided upon by the courts. Equally, the influence of churchmen in political life decreased, as the issue of deciding right and wrong in spiritual matters was no longer an issue of importance to the state. The nature of the state itself thus also changed with the religious peace, as states became confessionally neutral arbiters of religiously motivated conflicts. From then on, these conflicts were to be hammered out in the language of the state, and decided upon through legal courts.

By the end of the sixteenth century, religious fragmentation had become a fact of life both within Europe and within the states, and toleration was increasingly perceived as the only viable solution to this fragmentation. Equally, just as toleration had become the basis for interaction within states, the confessional fragmentation of Europe demanded that toleration be respected between states as well. Realizing that attempts to reimpose religious unity to Christendom would not succeed, the Emperor eventually had to give up his call as the 'Defender of the Faith' as well. As states through treaties mutually agreed to grant foreign subjects the same rights enjoyed by their own subjects, states took a keen interest in toleration being enforced by others as well. But the question remains who, in a system without any supranational authority, was to enforce these commitments. The *respublica Christiana* had offered monarchs an elaborate system of rules and customs under the jurisdiction of ecclesiastical courts.⁸⁸ The non-performance of a promise was considered perjury, which was a serious sin punishable by the ecclesiastical courts.⁸⁹ With the fragmentation of both the political and religious unity of the *respublica Christiana*, a new principle was necessary in order to ensure the compliance of autonomous and formally equal

⁸⁸ Randall Lesaffer, "The Medieval Canon of Contract and Early Modern Treaty Law", 2(2) *Journal of the History of International Law* (2000), 178–98, at 180.

⁸⁹ *Ibid.*, 183.

states. Grotius established the link between natural law and the *ius gentium voluntarium* (international law) through the principle of *pacta sunt servanda*.⁹⁰ States' compliance with these commitments in the absence of any legitimate supranational authority, however, now rested on the shoulders of states themselves. One problem, though, remained unsolved. This was the fact that the legitimacy of states actions was conditional upon the existence of a pact or treaty. If a state had not agreed to perform in a certain manner, no one would be justified in not respecting its sovereignty and forcing it to do so. Although history provides examples of how respect of minority rights were forced upon states by fellow states, the enforcement of minority rights nevertheless happened on an *ad hoc* basis, and often without any *de jure* authority to do so.

The civil unrest caused by the Religious Wars in Europe made it clear that the existence of states was dependent on their internal peace. This had not always been the case. One needs only to be reminded of the constant unrest and wars characteristic of feudalism to realize that this focus on internal pacification was bound to create a new type of state. Not only did the state enforce a secular conception of politics by keeping confessional debates outside of the political arena, but it also emerged as the guarantor of religious toleration. But although there were many normative reasons for this change, the logic underlying toleration had been one of political necessity. After experiencing the disruptive effects of confessional conflict and civil war, it was clear that the survival of the modern state depended on an appeasement of minority claims.

The solution championed and imposed by the state was one that deliberately turned its back on dogmatic considerations. As the ecclesiastical courts did not find a way out of the confessional struggles, the state imposed its own juridical and political solutions, solutions which deliberately left confessional issues unresolved.

Likewise, as the formally equal states of Europe no longer recognized the Pope and the Emperor as superiors, the responsibility for ensuring that states comply with their commitments to religious toleration now rested on states themselves, if not formally, at least on a *de facto* basis.⁹¹

Spiritual authorities had also lost their role in granting sovereign recognition to temporal princes. The constitutive rules of sovereignty, to employ Robert Jackson's

⁹⁰ Ibid.

⁹¹ With the Peace of Westphalia, the disruptive potential of claims for justice on an order in which minority rights are not granted was fully recognized, and the treaties opened for foreign intervention in the estates of the Empire by Sweden and France should these guarantees not be respected. In the absence of any supranational authority to sanction the compliance of states to their commitments, this responsibility was now left to states themselves. As detailed above, if there were indeed instances when states enforced these commitments, the principle of sovereignty and nonintervention nevertheless more often prevailed. For detailed accounts of the Peace of Westphalia, see Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth", 55(2) *International Organization* (2001), 251–87; and Stephane Beaulac, "The Westphalian Legal Orthodoxy – Myth or Reality?" 2(2) *Journal of the History of International Law* (2000), 148–77.

terminology, had become dependent on *de facto* control over a given territory rather than any *de jure* claim to such authority. Recognition of sovereignty by other actors was no longer made conditional upon adherence to religious norms and values. Interference in other states' internal matters could now only be done on a *de facto* basis, rather than in the name of a *de jure* right to interfere. As such, religious toleration in the Holy Roman Empire was enforced by fellow states on a *de facto* basis, rather than sanctioned by any supranational authority. As plurality became the norm of coexistence at both national and international levels, there was no one left to enforce it but formally equal sovereign states, and their commitment to do so was one of political interest rather than spiritual motivation.

Throughout the history of the state system, minority rights and special provisions have at times been a pressing concern to states, just as they have been neglected, forgotten, or even ignored. During the Cold War, for instance, the questions of minority rights and how to solve minority conflicts were largely ignored by policy makers and academics alike. After 1945, there was a general consensus that minorities were adequately protected through the non-discriminatory provisions of the Universal Declaration of Human Rights. Moreover, the stalemate between the United States and the Soviet Union provided Europe with one of its longest periods of peace. This suggests that claims by minorities were kept in check and not allowed to trigger any major conflicts in Europe. Surely, this does not, of course, imply that there were no minority conflicts in the rest of the world.⁹² But, as Jackson Preece argues, states during the Cold War were "... by and large free to deal with [their minorities] as they saw fit, since neither the UN, the COE, nor the CSCE gave minority questions more than cursory attention."⁹³ Thus, issues involving minority rights were either redefined in terms of human rights, or overlooked altogether.

But minority rights have increasingly been given more attention after the end of the Cold War, and minorities have in some sense regained their position as legitimate subjects of international concern. But even though the rights of minorities have to some extent been reiterated in international documents such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE's Copenhagen Document (1990), or the CoE's Parliamentary Assembly Recommendation 1134 on the Rights of Persons Belonging to National Minorities (1990), the enforcement of minority rights upon other states has nevertheless been a subordinate concern to the respect of the principles of sovereignty and nonintervention.⁹⁴ The sovereign state still seems to stand in the way of minority rights.

The present and future role of the state has therefore become a matter of increasing concern to International Relations. It has become the target of both academic snipers

⁹² See Evan Luard, *War in International Society* (London, 1986), 124, for a list of these conflicts.

⁹³ Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford, 1998), 120.

⁹⁴ *Ibid.*, 121–39.

and armored divisions, who fire in its direction, accusing it of having been the perpetrator of the worst crimes humanity has ever experienced, exemplified by the many atrocities of this century, and of standing in the way of a more humanitarian world order. In place of the sovereign state, it is argued, one should give other actors in the international system the responsibility for ensuring these rights, and subordinate the state to other institutions. In light of such accusations, is it still possible to believe that a solution to minority issues can be found within the framework of the state and the state system?

Taking into consideration the foregoing account of the role of the state in introducing and championing special provisions for religious minorities in Early Modern Europe, any discussion of the future role of the state in implementing and enforcing minority provisions would have to include a number of issues. The first of these is the central part the state played in introducing religious toleration. On the basis of this, one would have to consider whether or not the commitment of the state towards its own minorities and minority rights is necessary. Is the enforcement of minority rights today possible without the commitment of the state, and would such a commitment weaken if other actors were to be held responsible for the implementation and enforcement of minority rights? In other words, would states feel less responsible towards their own minority groups, and would that make the enforcement of minority provisions more difficult?

Furthermore, it must be considered that giving international actors the ultimate responsibility for ensuring that states uphold their commitments *vis-à-vis* their minorities may lead to a fragmentation of responsibility. As long as states are responsible for upholding minority provisions it is possible to know whom to blame. Fragmented authority, on the other hand, might lead to collective action problems, where none of the actors act, as no one feels responsible. New actors with different mandates and jurisdictions might well lead us straight back into a criss-cross pattern of authority, resembling that of the *respublica Christiana*.

Finally, the introduction of minority rights was not an issue of principle, as it often is today. Rights were granted to religious minorities out of prudential considerations about the future existence of the state itself. A discussion of where authority on minority issues is to be allocated thus has to take into account the need for prudential considerations as well as normative ones.

The manner in which minority rights were first introduced in Europe during the Wars of Religion suggests that a discussion of the future role of the state has to be sensitive to a cluster of issues. As well as ensuring international actors' commitment and willingness to act, it is important to ensure the continuous commitment of states themselves. Therefore, it is crucial to ensure that areas of responsibility are clearly defined, in order to avoid collective action dilemmas. Bridging this gap between the sovereignty of the state and the authority of supranational actors might very well be the most difficult challenge facing any reconception of the role of the state in guaranteeing minority provisions.