

LECTURE II

Grotius, Hobbes and Pufendorf

Bodin's analysis of sovereignty was - contrary to what one would have expected on the "absolutist" interpretation of his work - quickly welcomed by readers uneasy about contemporary monarchical power. The first response that we know of came from Simon Goulart, the Calvinist minister of Geneva, who arranged for an edition of the Six Livres to be produced at Geneva in 1577, a project which he would not have undertaken had he not fundamentally approved of the work¹. Goulart added a preface praising Bodin as a "man who is right in very many places",² but correcting Bodin's view of the Genevan constitution and - more interestingly - observing that Bodin had been mistaken in saying (as he did in the first edition) that both Luther and Calvin had been opposed to rebellion against a tyrannical monarch; Goulart quoted in extenso Calvin's famous remarks about Ephors to show that he had supported constitutional resistance of this kind against tyrants. In a preface to the 1578 Paris edition of the Six Livres Bodin responded to this in hurt tones, stressing that he had opposed "the opinions of those who write on enlarging the rights of the treasury and the royal prerogative" and was simply hostile to the more radical claims that sovereign kings must be elected and can be deposed by their people;³ he also added a discussion of Calvin to the relevant passage in later editions of the Six livres, saying that Calvin in his observations about ephors

¹ He said that "pour autant qu'en ces discours de Bodin il y a beaucoup de choses dites librement & qui peuvent servir, on a pense faire plaisir aux François de les leur communiquer en petit volume, tant pour soulager leur main & leur bourse, que d'autant qu'ils eussent estre frustrez de la lecture d'iceux, á cause qu'apres la premiere edition mise en lumiere lon avoit defendu au libraire de la faire imprimer" (sig *5r - *5v)

² "homme qui a beaucoup leu á la verité".

³ McRae p. A71.

sheweth sufficiently, that it was never lawfull in a right Monarchie, to assault the prince, neither to attempt the life or honour of their soveraigne king: for he speaketh not but of the popular and Aristocratique states of Commonweales.⁴

Though of course, Calvin had added to his list of ephoral institutions, modern Estates Generals - something Bodin simply (and characteristically) omitted.

As Bodin's response to Goulart makes clear, he believed that his defence of the parlements and his insistence that kings could be held to their contracts was a defence of "the interest of the people" in "these perilous times", and that he and the Genevan were essentially on the same side, for each would be opposed to the kind of extreme resistance theory which he condemned. That this was not a misreading of the situation is confirmed by other early uses of the Six livres. Most strikingly (and something I commented on in my Philosophy and Government) Aggaeus van Albada, a Frisian jurist who was a member of the Dutch delegation at the Peace Conference of Cologne in 1579, quoted freely from the Six livres in the annotations to the edition of the papers exchanged at the conference which he published at the end of 1579, alongside quotations from the Vindiciae contra tyrannos, Beza's De Iure Magistratum (in the version issued by the Catholic radical Johann Baptist Fickler) and other "monarchomach" texts.⁵ Van Albada was particularly interested in Bodin's defence of armed intervention by neighbouring

⁴ McRae pp 224-225. See the Sei Libri ed Isnardi Parente I pp 617-618 for the original text, and the addition dealing with Calvin.. For the Geneva edition, see Mueller

⁵ Acta pacificationis pp 53 and 283 on intervention, pp 97 and 99 on contracts. Van Albada's page citations of the Six Livres make clear that he was reading it in the Genevan edition, no doubt as part of a set of works approved by the Calvinists; this may also confirm that Goulart was correct in saying that it was hard to get hold of the first Paris edition.

princes in civil war [say more?], and in his claim that princes are civilly bound by their contracts. We find the same in other early uses of the work,⁶ and in general, I think it is fair to say, Bodin is not treated as a theorist of “absolutism” until well into the seventeenth century.⁷

The same is true of the particular aspect of Bodin’s thought with which we are concerned, the distinction between sovereign and government. The distinction was welcomed and put to use by two very different kinds of theorist in the late sixteenth and early seventeenth centuries, but neither saw it as supporting monarchical politics. One kind of theorist is represented by the

⁶ See François Grimaudet’s discussion of the distinction between lettres de justice and commandements Opuscules politiques (Paris 1580) pp 6 r and v, and, rather remarkably, Jean Boucher, the “monarchomach” Leaguer, who quoted Bodin in defence of tyrannicide in his De iusta abdicatione Henrici III of 1589, at a moment when Bodin himself was openly on the side of the League. He cited Buchanan on the subject, and then said that “nec longe discrepat Bodini opinio” when he said (De rep II.5) that a tyrant who occupies the praesidia, arces etc can be treated as a public enemy (De abdicatione sig. Y1v). William Barclay in his De regno et regali potestate (1600) pointed out the error in this reading of Bodin, “viri certe in Politicis acuti” (p.359), an interesting example of both sides seeking to use Bodin’s authority.

⁷ Though it has often been said (including by me) that defenders of the French monarchy in the late sixteenth and early seventeenth century such as William Barclay and Pierre Gregoire were followers of Bodin, it is striking how little they actually refer to him, and how far they eschew the sovereign/government distinction [check]. It may even be that he was first read extensively as a predominantly royalist writer in England in the 1640s, by John Spelman (A view of a printed book), by Laud in his History written in the Tower (1695 p.130), and of course by Filmer in his The Necessity of the Absolute Power (1648). But at the same time he could still be cited in support of the Parliamentarians - see e.g. Henry Parker in his Jus Populi and William Prynne in his Soveraigne Power of Parliaments and Kingdomes. Prynne was particularly concerned to use Bodin’s argument that sovereignty lay with Roman people even under the Emperor (Fourth Part Aa2v, Bb1v, Third Part O3r); Filmer recognised that this had been Bodin’s view, and was at pains to refute it in his Observations on Aristotle’s Politiques. A moderate and most proper reply to a declaration (1642) quoted Bodin on Louis II of Flanders, and declared that “if the Parliaments War be necessary, and a necessary War is just, certainly a just War, cannot justly be called a Rebellion.” sig A4v. It is also worth noting that the Protestant La Poipelinière’s contemporary history of the French wars of religion records the stand of “Bodin jurisconsulte” at the Estates General (L’histoire de France enrichie des plus notables occurrences (La Rochelle 1581) II pp 341, 351).

group of German constitutional writers studied by Julian Franklin, who used it to analyse the German Empire along the lines Bodin had proposed for France, namely a monarchical sovereign and an aristocratic or even (for Bartholomew Keckerman) a democratic government.⁸

The other kind of thinker who welcomed the distinction is more surprising, and their adoption of it may have had an unexpected long-term significance. As Jason Maloy has shown, the early English Independents or “Brownists” seized on Bodin’s ideas in this area in order to clarify their ecclesiological ideas. Arguing against (mostly) Presbyterian critics who accused the Brownists of introducing democracy to church government, John Robinson the principal Independent theorist asserted (citing “Bodin of Commonw. book 1. chap. last.”) that

we beleeve, that the externall Church-government under Christ the onely mediatour, and monarch thereof is plainly aristocraticall, and to be administred by some certain choice men, although the state, which manie unskilfully confound with the government, be after a sort popular, and democraticall. By this it apperteyns to the people freely to vote in elections and judgments of the church: in respect of the other we make account, it behoves the Elders to govern the people even in their voting in just libertie, given by Christ whatsoever.⁹

⁸ See Franklin, “Sovereignty and the mixed constitution: Bodin and his critics” in The Cambridge History of Political Thought 1450 - 1700 ed. J.H. Burns and Mark Goldie (CUP 1991 pp 298-328).

⁹ A iust and necessarie apologie of certain Christians (n.p. 1625) p. 38, published first in Latin 1619. See also his Admonitio ad lectorem in Robert Parker’s De politeia ecclesiastica Christi (Frankfort 1616) sig. (:):5r: “Statum quidem Ecclesiae nos aliquatenus Democraticum esse credimus, at regimen neutiquam: sed contra, ut Christi capitis respectu, Monarchicum; sic & administratorum ratione, prorsus Aristocraticum...”

That is, the “state” in the Bodinian terminology, or the sovereign, was a democracy, in the sense that the congregation elected the ministers and determined doctrine, but the government was an aristocracy in the sense that it was a board of elders who made administrative decisions - though Robinson insisted that those decisions should be made “in the face of the congregation” and not privately.¹⁰ What this illustrates is that the Bodinian distinction mapped very neatly onto a system in which magistrates were elected and fundamental matters decided by popular assemblies, just as it had done in Bodin’s discussion of the Roman constitution. Robinson’s ideas were very influential on the Congregationalist settlers of New England, and the system of government which the settlers used both in their churches and in their town meetings was precisely what he described - and may have contributed to the way in which the American revolutionaries thought about their constitution, a theme I will take up in the last lecture.

But Bodin’s distinction did not go unchallenged in the seventeenth century, and for fifty years a debate raged over whether it was tenable to treat sovereign and government as separable entities. What is interesting about the debate is that it took place among people who were convinced by Bodin’s case against mixed government - in its old, Aristotelian form that idea was essentially off the agenda for a century or more. But it did not follow, for many of Bodin’s

¹⁰ It should be said that the Presbyterian opponents of the Independents did not necessarily disagree with this as a picture of church government; thus the Presbyterian George Gillespie, attacking an anonymous reprint of Chapter IV of Robinson’s Apologie, said “I remember I have read in sundry places of Bodin de repub. that the state is oft times different from the government”, but complained that in practice Robinson had tilted the balance of government towards democracy through his requirement that the elders deliberate and vote in public. An Assertion of the Government of the Church of Scotland (Edinburgh 1641) pp 24-25. The reprint was entitled The Presbyteriall Government Examined (1641). Chapter IV is reprinted down to sig. D2v, and is then followed by another text. (This has I think not been noticed by bibliographers). The Apologie was also fully reissued in 1644.

seventeenth-century readers, that the division between sovereign and government should take its place. The most important and interesting of these critical readers was Hugo Grotius. Grotius always had a rather low opinion of Bodin's work: he described him (in conversation in 1643 with Gui Patin) as someone who "knew a great deal but was very confused. His book De republica is a great heap of a work, full of falsities", and in a letter to his friend Jean Descordes of 1632 he said that he had always thought of Bodin as "a man more devoted to things than to words" and as someone "barely instructed in Greek".¹¹ As early as 1602 he was already questioning Bodin's views about the location of sovereignty in the Roman republic: responding to a friend's comments on a (now lost) part of his Parallelon Rerumpublicarum in which he had discussed the government of Rome, he said that

As for the Roman Republic, like you I disagree with Bodin... I believe that the Roman Republic when it was at its best was an example of those types of aristocracy which Aristotle defines as "constitutions which incline more than the so-called polity towards oligarchy"... For although the highest authority which Bodin calls sovereignty [ius Maiestatis] may have been in the people in time of war, there's plenty of evidence to show where the administration of government [rerum administratio] was to be found ordinarily and - as one might say - on a day-to-day basis, καὶ πάντων τῶν τυχόντων

¹¹ Pintard p.81; Noel Malcolm, "Jean Bodin and the Authorship of the "Colloquium Heptaplomeres" Journal of the Warburg and Courtauld Institutes 69 (2006) p.120. Grotius was being rather unfair about Bodin's Greek - Bodin's first publication was a scholarly edition in Greek of

διακονία. I do not think anyone denies that at Rome that power was with the optimates.¹²

So Grotius was already questioning the worth of Bodin's idea that a sovereign might lurk under the superficial apparatus of the day-to day government and be distinguishable from it; as far as he was concerned the actual administration was the sovereign.

In De Iure Belli ac Pacis he even applied this reasoning to the most difficult case, the Roman dictator. As I showed in my first lecture, Bodin used the dictator as a prime example of a ruler who apparently had total power but was not sovereign. Grotius met this example head on.

We must distinguish between the Thing itself, and the Manner of enjoying it; ...¹³ But these some have by a full Right of Property, some by an usufructuary Right, and others by a temporary Right. Thus, amongst the *Romans*, the Dictator was Sovereign for a Time. The Generality of Kings, as well those who are first elected, as these who succeed to them in the Order established by the Laws, enjoy the Sovereign Power by an usufructuary Right. But there are some Kings, who possess the Crown by a full Right of Property, as those who have acquired the Sovereignty by Right of Conquest, or those to whom a People, in order to prevent greater Mischief, have submitted without Conditions. Neither can I agree with those, who say the *Roman* Dictator had not the Sovereign Power, because it was not perpetual: For the Nature of moral Things is known by their Operations,

¹² Briefwisseling I p.29.

¹³ which takes Place not only in Things corporeal, but also in incorporeal: For a Right of Passage, or Carriage through a Ground, is no less a Thing than the Ground itself.

wherefore those Powers, which have the same Effects, should be called by the same Name. Now the Dictator, during the whole Time of his Office, exercised all the Acts of civil Government, with as much Authority as the most absolute King; and nothing he had done could be annulled by any other Power. And the Continuance of a Thing alters not the Nature of it, ...¹⁴

But it is otherwise with those who are invested with a precarious Power, and which may be at any Time recalled, as were the Kings of the ancient *Vandals* in *Africk*, and of the *Goths* in *Spain*, whom the People might depose, upon any Dislike...¹⁵

(I.3.11.1; see also I.3.8.1)

Grotius was able to make this rather startling claim about the dictator because of his own theory of sovereignty. He set this out in general terms in I.3.7, in his account of summa potestas

That is called Supreme, whose Acts are not subject to another's Power, so that they cannot be made void by any other human Will... Let us then see what this Sovereign Power [summa potestas] may have for its Subject. The Subject then is either common or proper:

¹⁴ though if the Question be concerning Dignity, which is generally called Majesty, doubtless, he that has a perpetual Right, has a greater Majesty, than he that enjoys it but for a Time, because the Manner of holding adds to the Dignity. The same Thing may likewise be said of such, as during the Minority, Lunacy, or Captivity of their Kings, are appointed Regents of the Kingdom, so that they depend not on the People, and cannot be deprived of their Authority before the Time fixed by Law.

¹⁵ Whatever such a Prince does, may be abrogated by those who vested him with a Power so liable to Revocation; and consequently as the Exercise of his Authority has not the same Effects as the Acts of a true Sovereign, so neither is the Authority the same.

As the Body is the common Subject of Sight, the Eye the proper; so the common Subject of Supreme Power is the State [civitas]; which I have before called a perfect Society [perfectum coetum] of Men... The proper Subject is one or more Persons, according to the Laws and Customs of each Nation [gens].

As he said, he had earlier defined a civitas as “a compleat Body of free Persons [coetus perfectus liberorum hominum], associated together [sociatus] to enjoy peaceably their Rights, and for their common Benefit” (I.1.14). He termed this coetus perfectus indifferently a civitas, a gens and (most commonly) a populus.

The striking thing about Grotius’s idea of a coetus perfectus was that it could retain its identity under all kinds of arrangements about the “proper” subject of its sovereignty, its rulers. For example, different peoples could have the same head without necessarily becoming a single entity:

It is not in the moral Body [morale corpus], as 'tis in the natural, where one Head cannot belong to several Bodies; for there the same Person may be head, under a different Consideration, to several distinct Bodies; of which this is a certain Proof, that upon the Extinction of the reigning Family, the Sovereign Power reverts to each People. (I.3.7)

And a people could be ruled by a foreign civitas without losing its separate character.

This was not a matter of continuing to possess some power of self-government as a body or a collectivity of citizens independently of the head: as Grotius repeatedly made clear,

especially in his famous discussion in I.3.8,¹⁶ it was entirely possible for a people to have no rights vis-a-vis their ruler, and to be the equivalent of a slave, without ceasing to exist as a people. But it did mean that the people could not be divided, even by an absolute ruler: its original integrity as a coetus of individuals had to be maintained, even while it might be transferred by its ruler into the control of someone else, or linked to another coetus.

And while a “proper” subject of sovereignty, the ruler, could transfer his rights to another, this was not possible for the “common” subject: it could not divide itself or dissolve itself wholly into another society. This would be the death of the society, as he explained in II.9.5 and 6, where he argued that a “people” could be destroyed either physically, by war or plague, or juridically, by the extinction of their juridically separate identity.¹⁷ In a passage which must have been of interest to Hobbes, he expressed this with the analogy of the soul in the body:

[Do not] let any Man pretend to tell me, that the Sovereign Power [imperium] is lodged in

¹⁶ “Here we must first reject their Opinion, who will have the Supreme Power to be always, and without Exception, in the People; so that they may restrain or punish their Kings, as often as they abuse their Power. What Mischiefs this Opinion has occasioned, and may yet occasion, if once the Minds of People are fully possessed with it, every wise Man sees.”

¹⁷ “So *Livy* tells us, that the *Romans* were willing that *Capua* should be inhabited as a Town, but that there should be no Corporation, no Senate, no Common-Council, no Magistrates, no Jurisdiction, but a dependent Multitude [sine imperio multitudinem], and that a Governor should be sent from *Rome*, to dispense Justice among them. And therefore *Cicero*, in his first Oration to the People against *Trullus*, says, that *Capua* had “not so much as the Shadow of a State [reipublicae] left. (II.9.6) It is interesting that Grotius uses multitudo here in contrast to populus. Two sections later he use multitudinis imperium to mean democracy; on the other hand in one of his Biblical commentaries he distinguishes between a multitudo and a populus in rather Hobbes-like terms. On Deut xxxii.21, “in eo qui non est populus”, Grotius said “Iuris consociatio populum facit. Eo nomine indigna multitudo, quae aut nullas aut malas habet leges.” (I owe this reference to Noah Dauber). The commentary on Deuteronomy was published in 1644, a year after Grotius had read De Cive.

the Body, as in its Subject, and may therefore be alienated by it, as a Thing that properly belongs to it. For if the Sovereignty resides in the Body, it is as in a Subject which it fills entirely, and without any Division into several Parts; in a Word, after the same Manner as the Soul is in perfect Bodies (II.6.6)

Hobbes, as is well known, was to say instead that the proper subject, the ruler, was the soul of the society.

In addition to using this language, Grotius was also willing to use the medieval language of representation to try to capture the relationship between the proper and the common subject of sovereignty. Thus at II.20.24 he said that a

Law-Maker is in some Measure bound by his own Laws; but this only holds ... as far as the Law-Maker is looked upon as a Member of the Community, not as he is the Representative, and carries with him the Power and Authority of the State [quatenus auctor legis ut pars civitatis spectatur, non qua civitatis ipsius personam atque auctoritatem tollere]

And elsewhere he said that when Louis the Pious ceded the city of Rome to Pope Paschal, he was in fact returning it to the Roman people:

the French having received the Sovereignty over the City from the People of Rome, might well restore it to the same People, in the Person of him, who represented them, as being

Chief of the first Order of the State [cujus populi quasi personam sustinebat, qui primi ordinis princeps est] (I.3.13)

The original agreement to form a consociatio thus continued to constitute a single and indivisible society, irrespective of what kind of proper subject of sovereignty it possessed.¹⁸ The consociatio could not rule itself, but its identity as a people did not depend on its ruler, and was prior to it - just as the identity of the seeing body did not depend on the character or location of the eye (though of course one might get into Parfit-like problems here: if I perceive with the same organs of perception as you, are we separate people?). And its continued identity over time was given by the same principle which gave the Argonauts's ship its identity.¹⁹ Another way of putting the idea is that the sovereign represented an entity, the people, and could not legitimately begin to represent only one part of it and treat it differently from the other parts.

We can now see why Grotius thought it reasonable to say that the Roman dictator was a temporary sovereign, and not merely the agent of the sovereign people. The identity of the Roman people as the common subject of sovereignty was preserved intact under the dictator, as

¹⁸ Grotius did however believe that a union of disparate peoples did not represent their destruction - "if two Nations be united, the Rights of neither of them shall be lost, but become common, as the *Sabins* first, and afterwards the *Albans*, were incorporated with the *Romans*, and so were they made one State, as *Livy* (Lib. 1.) expresses it" (II.9.9). Pufendorf questioned the logic of this (see below). Grotius was after all living (or hoping again to live) in the United Provinces - though he was in general a believer in the separate identity of each province (see my Philosophy and Government).

¹⁹ See II.9.3.1, and Annabel Brett's discussion of this passage in her recent book.

indeed it was through all the twists and turns of Roman history, even down to the present day.²⁰ But the proper subject, the source of law, could be found anywhere, inside or outside the civitas, and perpetual or temporary - indeed, on Grotius's account it would be rather unreasonable to expect a perpetual proper subject, as, while the perpetuity of the people was given by their continuous identity as the common subject along the lines of the Argonauts' ship, the identity of the proper subject might vary from year to year or even for a shorter period, and it might well be that a sovereign democratic assembly could be superseded for six months by an equally sovereign dictator.²¹ Wherever a site of unquestionable legislation or jurisdiction could be located and for however long a period, there was the proper subject of sovereignty.²²

But - and this is of course the critical point for my general theme - by definition the common subject was not itself a source of legislation, but the community inside which the legislation had force. So within Grotius's theory it could not function like a Bodinian sovereign vis-a-vis the day-to-day legislators, but was instead in some ways like the people in pre-Bodinian political theory - though with the important difference that whereas most medieval writers supposed that the people as the ultimate source of political legitimacy could make their will known either through revolutionary action or through the slow build-up of customary law,

²⁰ This was a particularly disturbing conclusion for Grotius's readers, as he concluded that the Pope, as representative of the Roman people, still possessed sovereignty at Rome, and not the Holy Roman Emperor. See the long and remarkable discussion at II.9.11.

²¹ In the same way he argued that there could be divided sovereignty in the sense that joint sovereigns could take it in turns to issue laws or could share legislation between them (I.3.17).

²² "In Civil Governments, because there must be some dernier Resort [quia progressus in infinitum non datur], it must be fixed either in one Person, or in an Assembly; whose Faults, because they have no superior Judge, GOD declares, that he takes Cognizance of" (I.3.8.2)

Grotius thought that such an intervention could only be legitimate where the “proper” site of sovereignty specifically involved some kind of popular rule.²³ There could therefore be no distinction between sovereign legislator and government in Grotius’s theory, and the analysis of politics - as he had argued in 1602 - had to concentrate on the actual sources of power and law in the society, as they were experienced by the citizens in their daily lives. It was not sovereignty but government, in Bodin’s sense of the terms, that on Grotius’s view was critical to an understanding of politics.

Given this feature of Grotius’s theory, we can now begin to see that his major critic was Thomas Hobbes - and that it may even be that Hobbes worked out his constitutional ideas expressly in opposition to those of Grotius. He set out his case against Grotius in Chapter VII of De Cive and the related Chapter 2 of Part II of the Elements of Law, two chapters which in many ways contain the heart of his political theory but which have been relatively neglected in modern discussions of Hobbes.²⁴ Chapter VII contains a remarkable account of democracy as the first and most basic form of a commonwealth, and an extensive discussion of the various forms which a democracy can take. Among those forms, Hobbes argued, were all kinds of time-limited

²³ He took custom to have force only through the permission of the sovereign, and said nothing about desuetude (unlike Barbeyrac, who endorsed it). II.4.5.2

²⁴ As always, the relationship between De Cive and the Elements of Law is unclear. They either draw on a recent common ancestor or one is a loose translation of the other (except for De Cive’s chapters on religion). In the case of chapters VII and II.2, it may be significant that Hobbes discusses “usufructuary” monarchy in De Cive but not (under that designation) in the Elements of Law. This suggests that he had Grotius in view when he wrote this part of De Cive, and as a critique of Grotius would be the natural form which the development of his ideas in this area would take, the implication is that they were first worked out fully in De Cive (or in a similar, lost work) and then presented in an abridged English-language form in the Elements. On the other hand the Elements seems to lack important features of the discussion in De Cive, and looks like a relatively rough draft (see next footnote).

monarchies, and he set out his ideas in a long paragraph from which I will quote extensively, as it makes his views entirely clear, and inter alia provides the vivid analogy which gives my lectures their title. He presumed, of course, that a democracy must involve an actual assembly of citizens, and he considered four possible cases in which a time-limited monarch might be created. The first was the case when the assembly elected a king without any provision for reassembling on his death; in such a case the democracy had ipso facto dissolved itself and transferred sovereignty to the king. The second was when

the people leave the assembly after the election of a time-limited Monarch with the decision already made to meet at a certain time and place after his death; in this case, on the Monarch's death, power resides firmly in the people by their previous right, without any new act on the part of the citizens; for in the whole intervening period sovereign power [summum imperium] (like Ownership) remained with the people; only its use or exercise was enjoyed by the time-limited Monarch, as a usufructuary.

The third case was

if after the election of a *time-limited Monarch*, the *people* has departed from the council with the understanding that it would hold meetings at fixed times and places while the term set for the Monarch is still running, (as *Dictators* were appointed among the Romans), such a one is not to be regarded as a *Monarch* but as the first minister of the *people*, and the *people* can, if it shall see fit, deprive him of his office [administratio]

even before his term is finished, as the Roman *people* did when they gave Master of the Horse *Minutius* equal power with *Quintus Fabius Maximus* whom they had previously made *Dictator*...

And the fourth was

if the *people* leaves their council after appointing a *time-limited Monarch* without leave to meet again except on the orders of the appointee, the *people* is understood to be thereupon dissolved; and power belongs absolutely to anyone appointed on these terms. The reason is that it is not in the citizens' power to revive the commonwealth except at the will of the sole holder of power. And it does not matter that he may have promised to summon the citizens at certain times, since the *person* to whom the promise was made no longer exists except at his discretion.²⁵

²⁵ In the Elements of Law the distinction between the four cases is less crisp. The dictator is the same as an elected king: “if this power of the people were not dissolved, at the choosing of their king for life; then is the people sovereign still, and the king a minister thereof only, but so, as to put the whole sovereignty in execution; a great minister, but no otherwise for his time, than a dictator was at Rome” (II.2.9). And the right of the people to assemble during the monarch or dictator’s term of office (De Cive’s third case) is treated as a general right: “though in the election of a king for life, the people grant him the exercise of their sovereignty for that time; yet if they see cause, they may recall the same before the time. As a prince that conferreth an office for life, may nevertheless, upon suspicion of abuse thereof, recall it at his pleasure.” This suggests that at the time Hobbes wrote the Elements, while he certainly believed that the critical question with regard to elective kingship was whether the democratic assembly had “the right of assembling at certain times and places limited and made known” or not (II.2.10), he had not fully focussed on the fact that there might be different specifications of the times, some of which would not permit the assembly to exercise its sovereign rights until the death of the incumbent ruler.

Having set out the four cases, Hobbes enlarged his discussion with a striking analogy.

What we have said about these four cases of the *people* electing a *time-limited Monarch* will be more fully developed by a comparison with an *absolute Monarch* who has no heir apparent; for the *people* is a *Lord* [Dominus] of the citizens in such a way that it cannot have an heir which it has not named itself. Besides, the intervals between meetings of the citizens may be compared to the times when a *Monarch* is asleep; for the power is retained though there are no acts of commanding. Finally, the dissolution of a meeting on the terms that it may not reconvene is the death of a *people*, just as sleeping without waking is the death of a man. If a King without an heir is about to go to sleep and not wake up again, (i.e., is about to die) and hands sovereign power to someone to exercise until he awakes, he is handing him also the succession; likewise if a *people* in choosing a temporary Monarch, at the same time abolishes its own power of reconvening, it is passing dominion over the commonwealth to him. Further, a king who is going to sleep for a while gives sovereign power to someone else to exercise, and takes it back when he wakes up; just so a *people*, on the election of a temporary Monarch, retains the right of meeting again at a certain time and place, and on that day resumes its power. A king who has given his power to someone else to exercise, while he himself stays awake, can resume it again when he wishes; just so a *people* which duly meets throughout the term set for a *time-limited Monarch* can strip him of power if it so wishes. Finally a king who gives the exercise of his power to another person while he sleeps, and can wake up again only with the consent of that person, has lost his life and his power together; just so a

people which has committed power to a *time-limited Monarch* on the terms that it cannot meet again without his command, is radically dissolved, and its power rests with the person it has elected.

The thoroughness with which Hobbes worked through these possibilities is itself a testimony to the importance he placed on the subject. It is clear that he was tracking Grotius's discussion at De Iure Belli ac Pacis I.3.11 which I quoted earlier, with its analysis of the sovereignty of elected monarchs which "some have by a full Right of Property, some by an usufructuary Right, and others by a temporary Right." And it is also clear that he wished to attack Grotius's view that the dictator - and a fortiori other elective rulers - was a sovereign. Essentially, Hobbes restated the Bodinian distinction between sovereign and government, even using the same terminology of summum imperium or summa potestas and administratio. But he was willing to go much further. As we saw in my last lecture, Bodin was concerned to insist that monarchs elected for life were significantly different from the dictator - for otherwise, as he said, "there should be few perpetuall soveraigne monarchs, seeing there bee but few that be hereditarie; so that they which come to the crowne by way of election, should not be soveraignes." Hobbes, however, ruthlessly followed through the logic of the distinction and concluded that elective monarchs were indeed not sovereign: all the elective monarchies of Europe were (by implication) really either aristocracies or democracies. Not even the monarchomachs had gone so far as to say this.

[check]

It is worth considering the far-reaching implications of this argument. On Hobbes's account, a sovereign can be very thoroughly asleep: in the case of an elected monarchy, it might

in principle be asleep for sixty or seventy years, or even more. Moreover, when awake the sovereign might do nothing more than select a new monarch, and promptly fall asleep again. So all actual legislation to do with the ordinary lives of the citizens, and all actual power exercised over them, would be in the hands of the monarch; yet the monarch would not be sovereign. At the very least this calls into question a naively Austinian view of Hobbes's theory of sovereignty, for it is very clearly not a theory of habitual obedience to a site of power. This point was made by Hobbes himself very clearly in Chapter X of De Cive, writing about an infant monarch:

The comparative advantages or disadvantages of different types of commonwealth [do not] result from the fact that sovereignty [imperium] itself or the administration of government business [imperii negotia administranda] is better entrusted to one man rather than to more than one, or on the other hand to a larger rather than a smaller number. For sovereignty [imperium] is a *power* [potentia], administration of government [administratio gubernandi] is an *act*. *Power* is equal in every kind of commonwealth; what differs are the acts, i.e. the *motions* and *actions* of the commonwealth, depending on whether they originate from the deliberations of many or of a few, of the competent or of the incompetent. This implies that the advantages and disadvantages of a régime do not depend upon him in whom the authority of the commonwealth resides, but upon the ministers of the sovereignty [ministros imperii]. Hence it is no obstacle to the good government of a commonwealth if the *Monarch* is a woman, a boy or an infant, provided that the holders of the ministries and public offices are competent to handle the business.

(X.16)²⁶

And he expressed it in dramatic fashion in Leviathan when he asserted (in a passage which has often surprised his readers) that

If a Monarch subdued by war, render himself Subject to the Victor; his Subjects are delivered from their former obligation, and become obliged to the Victor. But if he be held prisoner, or have not the liberty of his own Body; he is not understood to have given away the Right of Soveraigntie; and therefore his Subjects are obliged to yield obedience to the Magistrates formerly placed, governing not in their own name, but in his. For, his Right remaining, the question is only of the Administration; that is to say, of the Magistrates and Officers; which, if he have not means to name, he is supposed to approve those, which he himself had formerly appointed. (pp 114-115 original ed., Chapter XXI)

²⁶ Our edition of De Cive for CUP translates imperium in this passage as “government”, but I have now come to realise that this is misleading, and that it should be contrasted with gubernatio, administratio or the other terms which in this tradition meant government as distinct from sovereignty. See also his remarks at XIII.1: “We must distinguish between the *right* and the *exercise* of sovereign power; for they can be separated; for instance, he who has the *right* may be unwilling or unable to play a personal role in conducting trials or deliberating issues. For there are occasions when kings cannot manage affairs because of their age, or when even though they can, they judge it more correct to content themselves with choosing ministers and counsellors, and to exercise their power through them. When *right* and *exercise* are separated, the government of the commonwealth is like the ordinary government of the world, in which God the first mover of all things, produces natural effects through the order of secondary causes. But when he who has the right to reign wishes to participate himself in all judgements, consultations and public actions, it is a way of running things comparaple to God's attendeding directly to every thing himself, contrary to the order of nature.”

This was an important practical issue when Hobbes was writing, for the King was (or had recently been) in prison, but royal governors were still in office in many places of great strategic significance for the royalists, including the Channel Islands, Virginia and - above all - Ireland. And on Hobbes's account it was entirely reasonable to suppose that the imprisoned King was still sovereign, as he remained sovereign until his death even if he could do nothing - just as he would if he were similarly inert while asleep. What both the imaginary case of the sleeping king and the real case of the imprisoned king illustrate is that the power of the sovereign was not conditional upon his choosing to use it, as in neither case would the sovereign be able effectively to make a choice to exercise power over the citizens. Instead it was conditional upon the possibility (potentia) of the sovereign being able at some point to assert his superiority to his ministers, or to his captors; and for the imprisoned ruler that remained a possibility right down to the moment before the executioner's axe fell.

Moreover, the structure of government put in place by the sovereign could be complex, and contain elements of all three traditional regimes - in this sense, like Bodin, Hobbes was not necessarily opposed to mixed government. He spelt this out particularly clearly in the Elements of Law II.1.17.

Though the soveraignty be not mixt, but be alwayes either Simple *Democracy* or Simple *Aristocracy* or pure *Monarchy*, neverthelesse, in the administration thereof, all those sorts of government may have place Subordinate. For Suppose the Soveraigne power be Democracy, as it was sometymes in *Rome* yet at the same tyme they may have a Councill *aristocraticall*. Such as was the Senate, And at the Same tyme they may have a

Subordinate *Monarch* such as was their *Dictator*, who had for a tyme the exercise of the whole Sovereignty. and such as are all *Generalls in warre*. So also in a *Monarchy*, there may be a Councill *Aristocraticall* of men chosen by the *Monarch*, or *Democraticall*, of men chosen by the consent, (the *Monarch* permitting,) of all the particular men of the Common Wealth. And this mixture is it that imposeth; as if it were the mixture of Sovereignty. As if a man should thinke because the great Councill of *Venice* doth nothing ordinarily, but choose Magistrates, Ministers of State, Captaines, and Governours of Townes, Ambassadors, Counsellours, and the like; that therefore their part of the Sovereignty, is only choosing of Magistrates. And that the making of warre and peace, and lawes, were not theirs, but the part of such Counsellours, as they appointed thereto. Whereas it is the part of these to doe it but subordinatly, the supream Authority thereof being in the great Councill that chooseth them.

It is worth noting that Hobbes included here as a possible part of the functions of government “the making of warre and peace, and lawes” - powers which of course an elective monarch also had to possess.

Hobbes’s repudiation of Grotius on the dictator and the elected monarch was at the same time, as one would expect, a repudiation of Grotius’s whole theory of sovereignty. For Hobbes, there could be no common subject of sovereignty: the only subject of sovereignty was Grotius’s proper subject, the actual source of law. Above all, a people did not possess even conceptually a distinct identity from their sovereign. This is also set out most clearly in *De Cive*, where his whole argument began from an analysis of democracy (which is of course why the discussion of

elective monarchy and dictatorship is so extensive in that work). Indeed, Samuel Pufendorf was to observe, rather acutely, that “Mr. Hobbes imposeth upon less intelligent Readers, by the ambiguous Signification of the Word People”, in appealing to an intuitive notion of democratic sovereignty and then extending the same notion to monarchy:

Should a Man contend with so much Earnestness, that he cannot, in democratical Governments, conceive such a Compact in his Mind [i.e. a compact between sovereign and people], or that he judgeth it utterly useless; yet he cannot fairly take Occasion thence to exclude it from other Forms, where those who command, and those who obey, are really and naturally different Persons. (VII.2.12).

The heart of Hobbes’s argument in De Cive was that the formation of a people immediately and necessarily implied a commitment to majoritarianism. As he said at VI.2,

[I]f the move towards formation of a commonwealth is to get started, each man of the multitude must agree with the others that on any issue anyone brings forward in the group, the wish of the majority shall be taken as the will of all; for otherwise, a multitude will never have any will at all, since their attitudes and aspirations differ so markedly from one another. If anyone refuses consent, the rest will notwithstanding form a commonwealth without him.

And in the following chapter he put the thought in this way:

When men have met to erect a commonwealth, they are, almost by the very fact that they have met, a *Democracy*. From the fact that they have gathered voluntarily, they are understood to be bound by the decisions made by agreement of the majority. And that is a *Democracy*, as long as the convention [conventus] lasts, or is set to reconvene at certain times and places. For a convention whose will is the will of all the citizens has *sovereign power*. And because it is assumed that each man in this convention has the right to vote, it follows that it is a *Democracy*... (VII.5)

This democracy has straight away a determinate institutional character:

Democracy is not constituted by agreements which individuals make with the *People*, but by mutual agreements of individuals with other individuals. The first part of the statement is evident from the fact that in every agreement the persons making the agreement must exist before the agreement itself. But prior to the formation of a commonwealth a *People* does not exist, since it was not then a person but a number of individual persons. Hence no agreement could be made between the *people* and a *citizen*. But after a commonwealth has been formed, any agreement by a citizen with the *People* is without effect, because the *People* absorbs into its own will the will of the citizen [voluntate sua voluntatem civis illius ... complectitur] (to whom it is supposed to be obligated); it can therefore release itself at its own discretion; and consequently is in fact free of obligation. (VII.7)

So a “people” formed by the civil covenant simply is the democratic assembly - only it (we may say) has the institutional specificity which was the key thing which Hobbes wished to attribute to the people, and thereby block all attempts by self-appointed spokesmen to speak on the people’s behalf (or, we would say today, to claim knowledge of “public opinion”).²⁷ The idea of a common subject of sovereignty distinguishable in some fashion from the institution of a democracy thus made, on Hobbes’s argument, no sense at all.

In Chapter XII of De Cive he accordingly proceeded to make exactly the move which Pufendorf criticised.

Men do not make a clear enough distinction between a *people* and a *multitude*. A *people* is a *single* entity, with a *single will*; you can attribute *an act* to it.. None of this can be said of a *multitude*. In every commonwealth the *People* Reigns; for even in *Monarchies* the *People* exercises power (imperat); for the *people* wills through the will of *one man*. But the citizens, i.e. the subjects, are a *multitude*. In a *Democracy* and in an *Aristocracy* the citizens are a *multitude*, but the *council* [curia] is the *people*; in a *Monarchy* the subjects are a *multitude*, and (paradoxically) the *King* is the *people*. (XII.8)

If the assembly is the people in a democracy, then it must simply follow (on Hobbes’s analysis) that the monarch is the people in a monarchy. The extraordinary character of this claim is in itself testimony to the fact that his theory emerged from reflections on democracy, together with

²⁷ Compare his remarks about majority opinion, De Cive VI.20 - “it is not a natural rule that the consent of the majority should be taken for the consent of all”, that is, it requires a specific institutional context for a majority to be authoritative.

the conviction that there could be no formal distinction between a democratic sovereign and a monarchical one.²⁸

Although Hobbes occasionally wavered from this fiercely clear-eyed position, and found himself talking about a people as if it might be distinguishable from the sovereign (as, indeed, he did in the passage I have just quoted - “the *people* wills through the will [per voluntatem] of *one man*” - despite the fact that in this passage above all it is plain that he meant what he said when he called the King the people), whenever he was concerned to be precise he tried to produce a form of words which restricted the identity of a people solely to the site of sovereignty.²⁹

The political implications of Hobbes’s remarks about elective monarchy were very clear to contemporaries, and occasioned some of the sharpest criticism which Pufendorf delivered to Hobbes in his De Iure Naturae et Gentium of 1672. Referring to the second of Hobbes’s cases of time-limited monarchy, in which the people agreed to meet on the monarch’s death, but in the meantime “*sovereign power (like Ownership) remained with the people*”, Pufendorf expostulated that

²⁸ See also Hobbes’s explanation of the character of absolute power, in one of his notes to the 1647 edition. “*A popular state obviously requires absolute power, and the citizens do not object. For even the politically unaware see the face of the commonwealth in the popular assembly and recognise that affairs are being managed by its deliberations. A Monarchy is no less a commonwealth than a Democracy, ... But to most people it is less obvious that the commonwealth is contained in the person of the King.* (VI.12.n)

²⁹ Hobbes may even have been spurred to develop this idea by his reflections on elective monarchy: in the Elements of Law the paragraphs in II.2 on elective monarchy are immediately followed by an extensive discussion (in II.2.11) of the meaning of the word “people” and the distinction between a people and a multitude. This is the first time the distinction appears in these terms in Hobbes’s writings - in the previous chapter (II.1.1-3) Hobbes distinguishes only between a multitude (before union) and a “body politic” (after union).

we utterly dislike the Assertion of Mr. Hobbes, which we meet with in his Book De Cive;
 ... This Notion, if taken in the gross Sense in which it is deliver'd, we cannot but look
 upon as highly dangerous and prejudicial to all those limited Princes, who are ordain'd by
 the voluntary Donation of the People, and bound up to certain fundamental Laws. And
 the rather, because, as he hath taken the Liberty to call a King for Life a temporary
Monarch, others may, with as much Reason, extend the Name to those who receive the
 Sovereignty, with the Privilege of transmitting it by Inheritance, yet so as to keep it within
 their own Line and Family. Besides, since Mr. Hobbes hath not determin'd how far he
 would stretch the Parallel which he useth, he may easily be intangled in a Train of very
 pernicious Consequences. For since Property, consider'd in itself, is a much more noble
 Right, than that of temporary Use; some Men may, on these Principles, conclude that the
 People are superior to the Prince, and have a Power of bringing him to Correction, in case
 he doth not govern, according to their Pleasure and Humour.. (VII.6.17)

(Which was indeed Hobbes's third case - and Pufendorf was right that the distinction between
 the second and third cases was a fine one; it was after all not present in Hobbes's mind when he
 wrote the Elements of Law). Pufendorf accused Hobbes of "breaking and dividing" sovereignty,
 so that "the χρῆσις, the Property or real Possession resides in the People, and the χρησις only, or
 the Use in the Prince", and, like Grotius, he insisted that the power was the same whatever the
 situation after the holder of the power left office or died.

who for Instance, will pretend, that a Father hath only the χρησις of paternal Authority,

because upon his Death the Children are at their own Disposal? Or that a Master hath only the $\chi\rho\eta\sigma\iota\varsigma$ of the despotal Power, because, in case he die without Heirs, the Slave recovers his Liberty?

He was more hesitant about the dictator, but not on any major theoretical grounds. Partly, he believed that the dictator had not in fact had “all, and each precise Part of the Sovereignty so committed to him together, as that, during the six Months Space, he might exercise it as he pleas’d”,³⁰ and partly he thought that

Tho’ the Continuance of a Thing doth not change the Nature of it, yet there is no doubt to be made, but that a temporary Command is in Dignity much inferior to a perpetual one; since Men are wont to respect those with a much more solid Veneration, whom they apprehend to be incapable of returning to a private Condition, than those whom in a little time they are again like to see on the same Level with themselves.

He also admitted that it might be impossible to find an example of a truly time-limited sovereign of this kind. But it is clear that his general theory committed him, just as it had Grotius, to this

³⁰ Barbeyrac noted on this passage, “This is only true with respect to later Times, and we here speak of the Dictatorship, such as it was originally, and as it remain’d for several Ages, when there was any Necessity to have Recourse to it. See what I have said upon the same Place of Grotius”, where he endorsed Grotius’s view. So Barbeyrac reasonably enough took Pufendorf to be saying essentially the same as Grotius on the dictator, and he agreed with both of them.

being at least a conceptual possibility.³¹

This is because his general theory of sovereignty was fundamentally the same as Grotius's, though he tried to clarify and make more precise something Grotius had left rather vague. Like Grotius, he believed in distinguishing between the common and the proper subject of sovereignty;³² like Grotius he took the proper subject to be the usual three regimes; and like Grotius he took the common subject to be an association of free men which constituted and gave identity to a "people". He endorsed entirely Grotius's conclusion that a people could not be dismembered, even by a patrimonial sovereign who had (in general) no obligation to consult his subjects, though unlike Grotius he was clear-headed about the fact that the same argument should apply to the union of different peoples.³³ In so far as there was a divergence from Grotius, it came simply over Pufendorf's wish to spell out in detail the nature of the agreement between

³¹ The political significance of Pufendorf's rejection of the distinction between sovereignty and government came out clearly in his work De statu imperii Germanici of 1667. In this, he attacked the use which had been made of the distinction in the interpretation of the juridical character of the Holy Roman Empire of the idea "that the form of any State [Reipublicae] ought to be distinguished from the manner of its Administration [administrationis]", and in particular the claim that the Empire must be an aristocracy since sovereignty was lodged with the Electors: "(though these things may thus with Subtilty enough be disputed in the Schools, yet) no wise man will thereby be perswaded to think the *German* Empire is an *Aristocrasie*, especially if he has any competent degree of Civil or Politick Experience and Knowledge..." (Liberty Fund ed. p.163 - 164). This was because a genuine aristocracy required a Senate, that is, an aristocratic seat of government, and there was no such institution in the Empire; viewed objectively, the governmental structure of the Empire, Pufendorf famously concluded, was an "irregular" or even "monstrous" entity, closer to a federation than to anything else.

³² "The Sovereign Authority [sumum imperium], besides that in inheres in each State [civitas], as in a common or general Subject; so, farther, according as it resides either in one Person, or in a Council (consisting of some, or all of the Members) as in a proper or particular Subject, it produceth different Forms of Commonwealths [respublicae]." (VII.5.1)

³³ VIII.5.9 (repeating Grotius on dismemberment) and VIII.12.6 (on union).

individuals which created the association. As is well known, he argued that the formation of a civitas required two separate covenants or contracts - this was seen in the eighteenth century as Pufendorf's distinctive position. The first was between the individuals "each with each in particular, to join into one lasting Society [coetum, Grotius's term], and to concert the Measures of their Welfare and Safety, by the publick Vote [communi consilio ductuque]" (VII.2.7). The second was the covenant

when the Person or Persons, upon whom the Sovereignty is conferred, shall be actually constituted; by which the Rulers, on the one hand, engage themselves to take care of the common Peace and Security, and the Subjects, on the other, to yield them faithful Obedience; in which, likewise, is included that Submission and Union of Wills, by which we conceive a State to be but one Person. And from this Covenant the State receives its final Completion and Perfection. (VII.2.8)

This two-covenant theory, however, merely made explicit what had been implicit in Grotius, that there were two separate agreements, one to create the coetus and the other to locate sovereignty in its proper subject.

Pufendorf used the Hobbesian language, that in principle civil society required this "union of wills", and that "the only Method ... by which many Wills may be conceived as joined together" is

that each Member of the Society submit his Will to the Will of one Person, or of one

Council; so that whatsoever this Person or this Council shall resolve, in Matters which necessarily concern the common Safety, shall be deemed the Will of all in general, and of each in particular. (VII.2.5)

(In this passage, incidentally, he coined the phrases “general” and “particular” will - see Barbeyrac’s French translation, “la volonté de tous en général & de chacun en particulier”). But the use to which he put this language was expressly designed to avoid Hobbes’s conclusions. Only the second covenant, by which the “proper” sovereign was created, involved this Hobbesian cession of wills; the first, by which the initial coetus was formed, was based on the kind of consensus and continued separateness of individual wills which from Hobbes’s point of view made up a multitude. One might think (and this has occasionally been suggested) that nevertheless Pufendorf’s theory was little different from Hobbes’s, for Hobbes after all thought that we create a civil society by covenanting with our fellow citizens that we should all have the same sovereign, and this civil society acting as a democracy could then choose any other type of sovereign. Pufendorf’s first covenant would then be Hobbes’s civil covenant, and the second covenant a decision of the *primaeval* democracy to transfer sovereignty to a king, or to retain it in its own hand. Pufendorf was aware of this possibility, and was concerned to deny it. He conceded that

[w]hen ... a Number of free Persons assemble together, in order to enter upon a Covenant about uniting themselves in a civil Body, this preparative Assembly hath already some Appearance of a Democracy; properly in this Respect, that every Man hath the Privilege

freely to deliver his Opinion concerning the common Affairs.

But it was not a true democracy, as

he who dissents from the Vote of the Majority, shall not in the least be obliged by what they determine, till such time as, by means of a second Covenant, a popular Form shall be actually confirm'd and establish'd. Mr. Hobbes, for want of distinguishing these two Covenants, hath handled this Subject with great Confusion...

And he insisted that

[A] Number of Men cannot become one Body, unless they have agreed upon a constant Method of transacting publick Business. If they break up without settling this Point, yet prefix a Time and Place for considering and debating the Matter farther, in order to a final Resolution; we have then no more than the Rudiments and first Principles of a State, which cannot be properly styl'd a Democracy... But we are then to call it a democraticall Government, when the Right of settling Matters, relating to the publick Safety, is conferr'd for ever on a general assembly. (VII.5.6)³⁴

³⁴ He gave a concrete illustration of the kind of debate he had in mind, in "that Account, which Dionysius Halicarnassaeus gives us of the first Settlement of the Monarchy in Rome. For here, first of all, a Number of Men flock together, with Design to fix themselves in a new State; in order to which Resolution a tacit Covenant, at least, must be supposed to have passed amongst them. After this, they deliberate about the Form of Government, and that, by Kings being preferred, they agree to invest Romulus with the sovereign Authority. And this holds too in the Case of an Interregnum, during which, the Society being held together only by the prime

But Pufendorf also continued to claim that it was this agreement to meet in mutual discussion, rather than the agreement to submit their wills to a sovereign, which bound men together into civil society and gave them an identity as a people. The people, understood in this sense, remained the common subject of sovereignty, even though they had no formal and institutionalised legislative power, and the distinction between sovereignty and government, understood in the Bodinian or the Hobbesian fashion, was, he thought, merely scholastic. He had indeed already said precisely this in his work De statu imperii Germanici of 1667, in which he attacked the use which had been made of the distinction in the interpretation of the juridical character of the Holy Roman Empire of the idea “that the form of any State [Reipublicae] ought to be distinguished from the manner of its Administration [administrationis]”, and in particular the claim that the Empire must be an aristocracy since sovereignty was lodged with the Electors:

(though these things may thus with Subtilty enough be disputed in the Schools, yet) no wise man will thereby be perswaded to think the *German* Empire is an *Aristocrasie*, especially if he has any competent degree of Civil or Politick Experience and Knowledge...” (Liberty Fund ed. p.163 - 164).

This was because a genuine aristocracy required a Senate, that is, an aristocratic seat of government, and there was no such institution in the Empire; viewed objectively, the governmental structure of the Empire, Pufendorf famously concluded, was an “irregular” or even

Compact, it is frequent to enter the Debate about the Frame and Model of the Commonwealth.” (VII.2.8)

“monstrous” entity, closer to a federation than to anything else.

Like Grotius, it was the actual governmental structure which interested Pufendorf, and not the constitutional authority which might lie behind government, and be used to change it. But it was the idea that the sovereign could have the power to shake off the old systems of government which, as we shall see in my next lecture, fascinated the radicals of the eighteenth century. In their eyes Grotius and Pufendorf represented the ideological underpinnings of the old system, while (at least for some of them) Hobbes represented the new possibilities; and I do not think they were wrong.