

# HISTORIOGRAPHICAL REVIEWS

## STILL A MONSTROSITY? SOME REFLECTIONS ON EARLY MODERN GERMAN STATEHOOD

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**ABSTRACT.** *The German political scientist and philosopher, Samuel von Pufendorf, described the Holy Roman Empire in 1667 as a ‘monstrosity’, because it did not fit any of the recognized definitions of a state. The issue of the Empire’s statehood has been the most important consideration in its historiography in recent decades: was it a state? If so, what kind? This review addresses these questions by examining how the debate on the Empire is related to wider controversies surrounding German history, the contemporary process of European integration, and about political organization in general. It explains how these debates are rooted in the political and religious disputes of the sixteenth and seventeenth centuries that still influence how the history of the Empire is written today. The four principal modern interpretations are identified and assessed: the Empire as a ‘failed nation state’, as a federation, and, more recently, as an ‘Empire-State’ or a ‘Central Europe of the Regions’. The piece concludes by offering a new explanatory framework to assess the Empire’s political development.*

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Was the Holy Roman Empire a state? If so, what kind? These questions are important because of the Empire’s considerable historical significance. It stretched across much of Europe for over a millennium, claimed direct descent from ancient Rome and embodied the political expression of the ideal of a single Christendom. By providing the framework for German political development, it is also fundamental to history’s ‘German Question’: the struggle to define the nature and scope of the political organization of the German-speaking peoples and their relationship to their European neighbours. But above all, the Empire is central to wider debates, not only about the future shape of Europe, but also about political organization in general. It constantly reappears as an example, be it in seven of the eighty-five Federalist essays of the early American Republic, or in modern social and political science discussions on state formation.<sup>1</sup>

Two factors have shaped previous answers to our opening questions. First, politics have directly or indirectly impinged upon interpretations of the early modern Empire, most notably by instrumentalizing the past to serve various agendas in the ‘German Question’ – the process of nineteenth-century unification, early twentieth-century dictatorship, and later twentieth-century democracy and European integration. Second,

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<sup>1</sup> H. Wellenreuther, ed., *German and American constitutional thought: contexts, intentions and historical realities* (New York, 1990); T. Ertman, *Birth of the Leviathan: building states and regimes in medieval and early modern Europe* (Cambridge, 1997); H. Spruyt, *The sovereign state and its competitors* (Princeton, NJ, 1994).

there is a need for an explanatory framework to make sense of the German past and, especially, to convey that understanding to others. Above all, people have searched for a simple answer: to fit the Empire into recognized categories that enable comparisons with other polities.

This desire to pin the Empire down (it has to be *something*) has its roots in Aristotelian political philosophy where phenomena have to be one thing or another and to fit recognized and defined categories. To understand where we are now in the debates on the Empire as a state, we need to start by examining the early modern discussion of German statehood and how categories established in the late sixteenth century have affected subsequent interpretations. Four principal perspectives can then be assessed and some suggestions offered as to how we might move beyond Samuel von Pufendorf's famous depiction of the Empire as a 'monstrosity' outside the recognized categories of political science.

## I

The issue of the *Staatlichkeit*, or state-like qualities of the Empire arose, as elsewhere in Europe, through responses to the Bodinian concept of indivisible sovereignty. This, in turn, was related to post-Reformation controversies over the relative balance between spiritual and secular authority. Previously, politics had been discussed in such terms as various forms of rule (*dominium*) over people or land (*terra, territorium*), or the government (*regimen*) of kingdoms (*regia*), including that of the Germans and of the Empire (*imperium*) itself.<sup>2</sup> Debate focused on who could exercise these powers and what actions could be considered just according to theology and law. Bodin's concept shifted discussion on to three key areas. The first involved questions of authority, such as who exercised ultimate authority and whether any limits could be placed on this power. The second identified the infrastructure necessary to make authority effective and so sharpened the association of the state with formal institutions. The third concerned legitimacy by challenging the extent to which authority and infrastructure were accepted at a time when the Reformation had destroyed the consensus underpinning previous legal, moral, and theological props for political action.

These issues were particularly problematic in the Empire because it was still in the process of defining and regulating the relationship between the emperor and his principal subjects, the imperial estates (*Reichsstände*), or immediate political authorities governing the various principalities, counties, lordships, and imperial cities. This process has been labelled 'imperial reform' and began around 1480, but was still incomplete when the Empire experienced major upheavals.<sup>3</sup> The Reformation broke the unity of law and

<sup>2</sup> For the imperial and royal titles of medieval and early modern Germany, see H. Weisert, 'Der Reichstitel bis 1806', *Archiv für Diplomatik*, 40 (1994), pp. 441–513. Analyses of the contemporary discussion include B. Roeck, *Reichssystem und Reichsherkommen: Die Diskussion über die Staatlichkeit des Reiches in der politischen Publizistik des 17. und 18. Jahrhunderts* (Stuttgart, 1984); H. Gross, *Empire and sovereignty: a history of the public law literature in the Holy Roman Empire, 1599–1804* (Chicago, 1973); H. Dreitzel, *Absolutismus und ständische Verfassung in Deutschland* (Mainz, 1992), and his *Monarchiebegriffe in der Fürstengesellschaft* (2 vols., Cologne, Weimar, and Vienna, 1991). Further useful discussion in W. Braunereder, ed., *Heiliges Römisches Reich und moderne Staatlichkeit* (Frankfurt/M, 1993).

<sup>3</sup> H. Angermeier, *Die Reichsreform, 1410–1555* (Munich, 1984). Older, but still useful studies of the political character of the medieval Empire include E. Schoenian, *Die Idee der Volkssouveränität im mittelalterlichen Römischen Reich* (Leipzig, 1919), and W. Schieblich, *Die Auffassung des mittelalterlichen Kaisertums in der deutschen Geschichtsschreibung von Leibniz bis Giesebrecht* (Berlin, 1932).

theology, as well as fragmenting the ideal of Christendom upon which the emperor's universalist pretensions rested.<sup>4</sup> The start of prolonged conflict against both France and the Ottomans after 1477 forced both internal restructuring within the Empire to mobilize the resources needed to wage external war, as well as compelling the emperor and *Reichsstände* to redefine their relationship to other European powers. The changes occurred against a backdrop of social and economic change as central Europe emerged from the after effects of the fourteenth-century agrarian and demographic crisis.

These three pressures sharpened the debate on imperial politics and prompted two divergent interpretations as to what the Empire constituted. Some influential writers, such as Bogislaw Philipp von Chemnitz, followed Bodin in defining the Empire as an aristocracy in which the emperor was merely *primus inter pares* amongst the *Reichsstände*. Sovereignty was exercised collectively by the emperor and *Reichsstände* through common institutions, notably the *Reichstag*. This was hotly disputed by Dietrich Reinkingk and others who borrowed Bodin's concept of indivisible sovereignty, but applied it exclusively to the emperor to present the Empire as a unitary monarchy. Most realized, like Veit Ludwig von Seckendorff and Johannes Limnaeus, that actual conditions diverged considerably from Reinkingk's model and sought a middle path between these two interpretations by presenting the Empire as a mixed monarchy. The emperor remained sovereign, but shared the actual exercise of many key powers with at least some of the *Reichsstände*. This, essentially, was also the view of Samuel von Pufendorf, the most famous of these commentators. Unable to fit the Empire into any of the recognized Aristotelian categories, Pufendorf described it as a 'monstrosity' in his anonymous discussion of imperial politics published in 1667. This has frequently been misinterpreted as criticism and the word was actually deleted from later editions of Pufendorf's work. What he meant, however, was an irregular political body since the Empire lacked a single head.<sup>5</sup>

These sixteenth- and seventeenth-century debates still influence contemporary interpretations of the Empire. Regardless of perspective, all early modern writers were preoccupied by the question of power and conceived the Empire in dualist terms with emperor and princes engaged in a struggle for influence. Pufendorf believed the Empire had *declined* from a regular kingdom into an irregular body due to the growth of princely power at the emperor's expense. This was a source of strife since the emperor was continually struggling to regain lost authority. However, Peter Schröder has argued convincingly that Pufendorf did not advocate continued evolution towards a federal structure composed of distinct princely states.<sup>6</sup> On the contrary, Pufendorf believed that the existing Empire offered the best hope for peace, not just in central Europe, but also for the Continent as a whole. Here, Pufendorf was extending a growing tradition of positively assessing the Empire as both internally pacific and essential to wider European peace. This

<sup>4</sup> The implications are clearly set out by M. Heckel, 'Autonomia und Pacis Compositio', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Kanonistische Abteilung*, 45 (1959), pp. 141–248.

<sup>5</sup> B. P. von Chemnitz, *Dissertation de ratione status in Imperio nostro Romano-Germanico* (2nd edn, Frankfurt/M, 1647); D. Reinkingk, *Tractatus de Regime seculari et ecclesiastico* (Frankfurt/M, 1651); V. L. von Seckendorff, *Teutscher Fürstenstaat* (Frankfurt/M, 1656; reprint Glashütten, 1976); J. Limnaeus, *Juris publici Imperii Romano-Germanici libri IX* (Strasbourg, 1657). Pufendorf's work was first published under the pseudonym 'Severini de Monzambano' as *De statu imperii Germanici* in 1667. Available in a good modern edition edited by H. Denzer, *Die Verfassung des deutschen Reiches* (2nd edn, Stuttgart, 1994). The relevant passage is on pp. 105–6 of this edition.

<sup>6</sup> P. Schröder, 'The constitution of the Holy Roman Empire after 1648: Samuel Pufendorf's assessment in his *Monzambano*', *Historical Journal*, 42 (1999), pp. 961–83.

line was followed by the Abbé St Pierre, William Penn, and Rousseau among others into the early nineteenth century who all articulated various visions of European, or even world, peace based on the Empire's systems of collective decision-making and conflict resolution.<sup>7</sup> It was also reflected in the broad public discourse on imperial law that accompanied the constitutional checks and balances regulating relations between the emperor and *Reichsstände*.<sup>8</sup> This discussion imparted important characteristics to German political thought and culture by stressing a mediated relationship between the state and individual. Since the state, in the sense of sovereign authority, remained fragmented within the Empire, individual rights were safeguarded by the overarching imperial legal framework, rather than by clearly established political institutions. This encouraged a legalistic interpretation of the state as the rule of law (*Rechtsstaat*), rather than as defined by political institutions.<sup>9</sup>

## II

While discussion concentrated on the immediate question of power in the sixteenth and seventeenth centuries, the issue of the Empire's statehood (*Staatlichkeit*) emerged more prominently in the wake of the Napoleonic reorganization of Germany. Four distinct perspectives developed which remain with us today.<sup>10</sup> The earliest and most influential was the view that the Empire represented a failed nation state. According to this interpretation, the medieval Empire, and particularly the Habsburg dynasty that monopolized the imperial title after 1438, failed to develop as a viable carrier of nation statehood. Various aspects have been blamed, such as post-Reformation confessional strife, intervention by malevolent foreign powers, or the Habsburgs' selfishness and Catholicism. As a result, political development devolved to the *Reichsstände*, of whom only those with large, compact territories were able to create powerful institutions. Prussia emerged as the most important of these territories to assume the historic responsibility for forging German unity. This is, of course, a flawed interpretation, not least because of its fixation with an idealized concept of the state as a timeless construct – a singular goal for all historical development. Nonetheless, it has proved powerful and persists in continued interest in different German territorial 'states', such as Bavaria, Württemberg, and Saxony, as well as Brandenburg-Prussia and Austria.<sup>11</sup> It is also closely related to a particular historical

<sup>7</sup> W. Penn, *An essay towards the present and future peace of Europe* (London, 1693; reprint Hildesheim, 1983). This and the other texts are discussed and partly reprinted in K. V. Raumer, *Ewige Friede: Friedensrufe und Friedenspläne seit der Renaissance* (Freiburg, 1953). See also W. Burgdorf, 'Imperial reform and visions of a European constitution in Germany around 1800', *History of European Ideas*, 19 (1994), pp. 401–8.

<sup>8</sup> M. Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, 1: *Reichspublizistik und Polizeywissenschaft, 1600–1800* (Munich, 1988).

<sup>9</sup> Imperial political culture is explored further by M. Rowe, *From Reich to state: the Rhineland in the revolutionary age, 1780–1830* (Cambridge, 2003), and P. H. Wilson, 'War, political culture and central European state formation from the late middle ages to the nineteenth century', in N. Garnham and K. Jeffrey, eds., *Culture, place and identity* (Dublin, 2005), pp. 112–37.

<sup>10</sup> For the historiography of the Empire see H. Neuhaus, *Das Reich in der Frühen Neuzeit* (Munich, 1997); J. A. Vann, 'New directions for the study of the old Reich', *Journal of Modern History*, 58 (1986), supplement, pp. 3–22.

<sup>11</sup> For the process of the territorialization of political authority within the Empire see B. Arnold, *Princes and territories in medieval Germany* (Cambridge, 1991); E. Schubert, 'Die Umformung

approach: the search for *staatsbildende Kräfte* (state building forces) that are generally associated with rulers, rather than the ruled, and which thereby imparts a top-down approach to the past. Here the state emerges as the torchbearer of modernity and a progressive force.

The impression of a weak Empire presented by the failed nation state model was shared by those who regarded the Empire as a (con-)federation. This interpretation has long roots stretching back into the early eighteenth century to Montesquieu and others who presented the Empire as a confederation, in the sense of a composite state composed of other states. It has also been influenced by the writing on early forms of association (*Genossenschaft*), most notably that of Otto von Gierke, who studied medieval communes and collaboration amongst cities and knights.<sup>12</sup> Recently, this interpretation has undergone a positive re-evaluation transforming the idea of a weak ‘loose confederation’ into a flexible, even modern-looking state. Hermann Wellenreuther has stressed similarities between the Empire and the early American Republic, in that both provided legal and institution frameworks to safeguard rights. Whereas the Empire protected the rights of sovereigns, estates, and corporations, American federalism safeguarded individual as well as states’ rights.<sup>13</sup> Helmut Neuhaus is perhaps more cautious, rejecting the idea that the Empire was either a confederation (*Staatenbund*) or a federal state (*Bundesstaat*). Nonetheless, he identifies federal elements operating on two levels. One is the more familiar ‘micro-federal’ level of the medium territories that eventually absorbed their smaller neighbours and emerged as sovereign entities within wider federal structures: first, the Napoleonic Confederation of the Rhine in 1806, and then the German Confederation of 1815. That this did not occur earlier is due, Neuhaus believes, to the presence of macro-federalism within the Empire in the form of the intermediary regional level of the imperial circles (*Reichskreise*) between the emperor and the *Reichsstände*. The early sixteenth-century imperial reform grouped most *Reichsstände* into one of the ten *Kreise*, each with its own assembly where, unlike the *Reichstag*, each territory had a single equal vote. Alliances (called ‘Associations’) between two or more *Kreise* offered an alternative arena for political action that safeguarded the interests of the weaker territories and enabled the Empire to carry out key security and public order functions. Since the minor territories collectively had greater weight in the *Kreis* institutions than at the *Reichstag*, they saw the Associations as vehicles for their interests. Agreements between *Kreise* were ratified through their respective assemblies and became binding on all member territories, enabling the minor territories to pool their resources and even to secure entry into European alliances, such as the entry of the Franconian-Swabian Association into the Grand Alliance during the Nine Years War (1689–97).<sup>14</sup> These weaker territories are at the heart of Maiken Umbach’s positive assessment of eighteenth-century

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spätmittelalterlicher Fürstentherrschaft im 16. Jahrhundert’, *Rheinische Vierteljahresblätter*, 63 (1999), pp. 204–63. The historiography is discussed further by P. H. Wilson, ‘Regions and regionalism in early modern Germany’, in D. Rollason and W. Lancaster, eds., *Regions and regionalism in history* (Woodbridge, 2006), forthcoming.

<sup>12</sup> O. V. Gierke, *Deutsches Genossenschaftsrecht* (reprint Graz, 1954).

<sup>13</sup> Wellenreuther’s own comments in his, ed., *German and American constitutional thought*, pp. 86–92.

<sup>14</sup> H. Neuhaus, ‘The federal principle and the Holy Roman Empire’, in *ibid.*, pp. 27–49. For the *Kreise* and Associations see W. Dotzauer, *Die deutschen Reichskreise (1383–1806)* (Stuttgart, 1998); W. Wüst, ed., *Reichskreis und Territorium: Die Herrschaft über der Herrschaft?* (Stuttgart, 2000); K. O. V. Aretin, *Der Kurfürst von Mainz und die Kreisassoziationen, 1648–1748* (Wiesbaden, 1975); R. Wines, ‘The imperial circles: princely diplomacy and imperial reform, 1681–1714’, *Journal of Modern History*, 39 (1967), pp. 1–29.

German federalism. Rulers of minor principalities like Weimar and Anhalt promoted an idealized 'federal state, compatible with the national constitutionalism and respect for regional individualism that were the hallmarks of Enlightened thought'.<sup>15</sup> Her central argument is that 'modernization' did not necessarily entail 'centralization' and could be achieved through federalism and adherence to the imperial tradition of *Rechtsstaatlichkeit*, instead of via the absolutist bureaucratic militarized state exemplified by Brandenburg-Prussia under the Hohenzollern dynasty.

Such findings do point to continuity between the rejuvenated imperial ideal represented by such movements as the League of Princes (*Fürstenbund*) in 1785, and that strand of nineteenth-century liberal national thought that placed its hopes in transforming the German Confederation into a democratic federal state. However, while helpful in understanding the Empire's cultural memory, this interpretation does not really address the question of whether it was a state. Moreover, important elements are open to question. For instance, Abigail Green has recently reversed the standard paradigm of a centralized Prussia alongside Austria and opposed to a federal 'third Germany' of petty states, by highlighting the extent to which the medium principalities had developed uniform political and legal frameworks by the early nineteenth century, compared to the decentralized and often fragmented nature of the Hohenzollern monarchy.<sup>16</sup> Hartmut Lehmann has questioned the effectiveness of formal institutions like the *Kreise*, suggesting instead that regionalism was more prominently represented in the Empire as spheres of dynastic influence. Alfred Kohler has also highlighted dynasticism when he stresses that the Empire remained a feudal nexus centred on the emperor. Power was distributed unevenly down a hierarchy of vassals totally at odds with modern federal concepts that imply political interaction between equals on an even plane.<sup>17</sup>

One of the most challenging and thought-provoking interpretations of the Empire is that offered by Georg Schmidt with a deliberate attempt to reclaim the *Gesamtsstaatlich* or national perspective for the early modern period and to present the Empire as the first German nation state.<sup>18</sup> Schmidt argues that the Empire was a state defined, not so much by its formal institutions, than by nationally accepted common norms. He relates these to the contemporary ideal of 'German Freedom' (*deutsche Freiheit*), which he expands to embrace the rights and 'liberties' enjoyed by all individuals and groups within the Empire, as well as all forms of communal and popular participation in public life. He rejects Peter Blickle's contention that the popular, proto-democratic communal tradition, manifest in the attempt to realize life without lords during the German Peasants War (1524–6), was inherently at odds with the process of political territorialization more narrowly associated

<sup>15</sup> Umbach's own comments in Umbach, ed., *German federalism: past, present and future* (Basingstoke, 2002), pp. 42–69. See also her *Federalism and enlightenment in Germany, 1740–1806* (London, 2000), and P. Burg, *Die deutsche Trias in Idee und Wirklichkeit: Vom alten Reich zum deutschen Zollverein* (Stuttgart, 1989).

<sup>16</sup> A. Green, 'The federal alternative? A new view of modern German history', *Historical Journal*, 46 (2003), pp. 187–202.

<sup>17</sup> H. Lehmann, 'Another look at federalism in the Holy Roman Empire', in Wellenreuther, ed., *German and American constitutional thought*, pp. 80–5; A. Kohler, 'Das Heilige Römische Reich – ein föderativsystem?', in T. Fröschl, ed., *Föderationsmodelle und Unionsstrukturen* (Munich, 1994), pp. 118–26.

<sup>18</sup> G. Schmidt, *Geschichte des alten Reiches: Staat und Nation in der Frühen Neuzeit, 1495–1806* (Munich, 1999), and his 'The Peace of Westphalia as the fundamental law of the complimentary Empire-State', in K. Bussmann and H. Schilling, eds., *War and peace in Europe* (3 vols., Münster, 1998), 1, 447–54. Wolfgang Burgdorf makes a similar case in *Reichskonstitution und Nation: Verfassungsreformprojekte für das Heilige Römische Reich deutscher Nation im politischen Schriften von 1648 bis 1806* (Mainz, 1998).

with the princes.<sup>19</sup> ‘German Freedom’ was anchored in the constitutional reforms enacted by the 1495 *Reichstag* in Worms that established a political balance between the Empire’s component elements. To Schmidt, these changes represent the *Verstaatung* of the Empire, or its transformation from a medieval polity into a state. This is in direct contrast to Peter Moraw and others who have argued that while imperial reform imparted certain state-like qualities to the Empire, the process of *Verstaatung* was primarily experienced by the territories who were driven to create new institutions to meet the military, fiscal, and judicial obligations placed upon them by the new imperial legislation.<sup>20</sup>

The new Empire-State (*Reichs-Staat*) was consolidated by the Religious Peace of Augsburg in 1555 which Schmidt regards as a process of unification rather than division, since the settlement integrated the largely Protestant northern Germany with the Empire’s predominantly Catholic southern core by regulating religion within a common legal framework. The Peace of Westphalia provided further constitutional safeguards for German Freedom, and extended the range of rights to include, for many inhabitants, important individual liberties such as the right to emigrate and safeguards against religious discrimination. This curbed the drive towards a more federal structure inherent in the process of territorialization and ensured the Empire-State remained what Schmidt terms a *Komplementärer Reichs-Staat*. Complementary statehood was manifest through the trinity of Empire–*Kreise*–territories, each with separate, but complementary functions. The overarching imperial framework provided for defence and justice. The *Kreise* ensured common decisions were implemented and offered regional co-ordination. The territories supplied the administrative support needed to mobilize resources and moulded society through social discipline.

In contrast to other recent writers who have also presented positive reappraisals of the Empire, Schmidt adopts an overtly national perspective. He criticizes Karl Otmar von Aretin for overemphasizing the place of Burgundy and northern Italy (*Reichsitalien*) within the early modern Empire.<sup>21</sup> These areas were largely lost, or at least merely peripheral, he believes, reducing the Empire to southern and western Germany, plus German-speaking Austria. To this was added northern and eastern Germany, but not Prussia, thanks to imperial reform and the Religious Peace of Augsburg. This largely German Empire was underpinned by a cultural and linguistic nationalism that stressed common values rather than ethnic roots. It was undermined by the growth of a Protestant secessionist Germany dominated by Prussia after 1740, but remained intact until the Peace of Basel in 1795. Withdrawing unilaterally from the war against Revolutionary France and removing the northern territories into a neutral zone, Prussia precipitated the ‘quick end’ of the Empire by partitioning Germany.

Schmidt’s interpretation is the modern counter-blast to the failed nation state thesis. In place of a weak, disunited Empire, incapable of protecting ‘German’ interests and culture, we now have a harmonious, flexible Empire-State conserving Germany as a non-aligned element in the emerging European system of sovereign states. The great service of

<sup>19</sup> Blickle’s interpretation is now accessible in good translations: *Obedient Germans? A rebuttal: a new view of German history* (Charlottesville, 1997); *From the communal Reformation to the revolution of the common man* (Leiden, 1998); ‘Communalism, parliamentarianism, republicanism’, *Parliaments, Estates and Representation*, 8 (1986), pp. 1–13.

<sup>20</sup> P. Moraw, *Von offener Verfassung zu gestalteter Verfassung: Das Reich im späten Mittelalter 1250 bis 1490* (Berlin, 1985), p. 175.

<sup>21</sup> K. O. V. Aretin, *Das alte Reich, 1648–1806* (3 vols., Stuttgart, 1993–7).

Schmidt's thesis is that it reintroduces legitimate questions about national identity into the historical debate without resurrecting any of the ghosts of Germany's chauvinistic past. However, it is not clear whether the new terminology of the 'complementary Empire-State' actually clarifies the complex imperial structure, and there is definitely a tendency to overemphasize the modernity of some aspects of German Freedom.<sup>22</sup> Moreover, the tendency to exclude more peripheral regions reinforces what one recent writer has called 'the impression that the Holy Roman Empire lay only within the boundaries of the pre-1990 Federal Republic and modern-day Austria'.<sup>23</sup> Though not intended, it also risks perpetuating the Cold War divide by implying that the Empire's positive attributes were exclusively associated with those areas later situated in the democratic west, while the history of the regions east of the river Elbe was always dominated by authoritarianism and servitude.

Peter-Claus Hartmann represents the current counter-point to Schmidt's national perspective, though it shares much in common and is equally positive in its reappraisal of the Empire. Whereas Schmidt looks for an early modern nationalism as the basis of a single Empire-State, Hartmann stresses political and cultural diversity. He endorses much of the general positive reappraisal of imperial institutions inherent in the notion of complementary statehood, but presents this in language borrowed directly from the European Commission. The territories represented the 'principle of subsidiarity' in that they assumed responsibility for the direct management of local concerns and shouldered elements of common burdens. By incorporating the territories within a common framework, the Empire constituted a 'Central Europe of the Regions', promoting progress through cultural exchange and cross-fertilization, whilst leaving niches in which minority cultures could preserve their distinctiveness. Federalism resurfaces in Hartmann's comparisons between the Empire's representative institutions and those of the modern Federal Republic of Germany, such as likening the *Kreis* assemblies to the *Bundesrat*.<sup>24</sup> Hartmann is not alone

<sup>22</sup> This is even more pronounced in his more recent work: 'Die "deutsche Freiheit" und der Westfälische Friede', in R. G. Asch et al., eds., *Frieden und Krieg in der Frühen Neuzeit* (Munich, 2001), pp. 323–47. For the debate on German nationalism see J. Whaley, 'Thinking about Germany, 1750–1815: the birth of a nation?', *Publications of the English Goethe Society*, 66 (1996), pp. 53–72. For recent critiques of Schmidt, see H. Schilling, 'Reichs-Staat und frühneuzeitliche Nation der Deutschen oder teilmmodernisiertes Reichssystem: Überlegungen zu Charakter und Aktualität des Alten Reiches', *Historische Zeitschrift*, 272 (2001), pp. 377–95; W. Reinhard, 'Frühmoderner Staat und deutsches Monstrum: Die Entstehung des modernen Staates und das Alte Reich', *Zeitschrift für historische Forschung*, 29 (2002), pp. 339–57; A. Gotthard, 'Vormoderne Lebensräume: Annäherungsversuch an die Heimaten des frühneuzeitlichen Mitteleuropäers', *Historische Zeitschrift*, 276 (2003), pp. 37–73 esp. at p. 50. There are clearly also connections to the parallel debate on the relevance of early modern history to the twenty-first century, and the relative merits of political and institutional history, as opposed to new cultural history: see J. Burkhardt, 'Über das Recht der Frühen Neuzeit, politisch interessant zu sein', *Geschichte in Wissenschaft und Unterricht*, 50 (1999), pp. 748–56.

<sup>23</sup> J. Lavery, *Germany's northern challenge: the Holy Roman Empire and the Scandinavian struggle for the Baltic, 1563–1576* (Boston, 2002), p. 5. For a recent reassessment of the significance of north-eastern Germany to the Empire see J. Vötsch, *Kursachsen, das Reich und der mitteleuropäische Raum zu Beginn des 18. Jahrhunderts* (Frankfurt/M, 2003).

<sup>24</sup> See the three works by P. C. Hartmann, *Kulturgeschichte des Heiligen Römischen Reiches 1648 bis 1806* (Vienna, 2001); 'Bereits erprobt: ein Mitteleuropa der Regionen', *Das Parlament*, 49–50 (3/10 Dec. 1993), p. 21; 'Die Kreistage des Heiligen Römischen Reiches – Ein Vorform des Parlamentarismus?', *Zeitschrift für Historische Forschung*, 19 (1991), pp. 29–47. Similar arguments in W. Fühnrohr, *Der Immerwährende Reichstag zu Regensburg: Das Parlament des alten Reiches* (2nd edn, Regensburg, 1987).



in drawing parallels between the Empire and the EU, for others have, for instance, compared the system of imperial justice with the European Court.<sup>25</sup> Indeed, the underlying premise of this perspective harks back to those such as Pufendorf and Rousseau who saw the Empire as a model for future European harmony.

### III

Hartmann's interpretation returns us to our opening remarks about the instrumentalization of the German past and the search for all-embracing categorizations of the Empire's political structure. Clearly, the answer to the question of whether the Empire was a state depends largely on how a state is defined. Certainly, the Empire could do things commonly associated with other early modern states, and in this sense we can concur with recent historical revisionism.

The Empire was a sovereign realm with a distinct head in the person and function of the emperor. The emperor retained final authority through his (largely undefined) reserved powers. The princes and other *Reichsstände* only enjoyed lesser 'territorial sovereignty' (*Landeshoheit*), or powers deriving from their place within the imperial constitution and limited by imperial law.<sup>26</sup> Much of the confusion in interpreting the Empire stems from the fact that territorial sovereignty was in a constant state of evolution. Its character was not uniform as princes and other territories enjoyed distinct privileges that were the source of constant reinterpretation and numerous disputes. A further source of misunderstanding has been the conflation of sovereignty with legitimacy. The constraints on the emperor's freedom of action (and indeed on other power holders within the Empire) often had less to do with formal written rules, than with perception and status. Till the end, imperial politics remained a slow process of fostering minimum common consensus prior to action.

The imperative of fostering consensus limited common action, but did not prevent it altogether. The Empire could, and did, act in concert and not merely as a framework for maintaining the public peace amongst its weaker constituents. It was able to conduct common external relations with other powers, to defend itself and even to act aggressively on occasion.<sup>27</sup> However, its ability to perform these functions varied considerably over time and, importantly, this variation was not simply a process of linear decline, but included periodic revival and changes of direction. The Empire developed formal institutions to facilitate common action, to express its sovereignty and to legitimate political action. They included both arenas for decision-making at different levels, like the *Reichstag* and *Kreis* assemblies, as well as mechanisms for raising men and money and to enforce the collective will. These institutions have all been the subject of recent research that generally stresses

<sup>25</sup> M. Hughes, 'Fiat justitia, pereat Germania? The imperial supreme jurisdiction and imperial reform in the later Holy Roman Empire', in J. Breuilly, ed., *The state of Germany* (Harlow, 1992), pp. 29–46.

<sup>26</sup> Still of use is J. J. Moser, *Neues Teutsches Staats-Recht* (20 vols., Frankfurt/M, 1766–75).

<sup>27</sup> For examples see M. Plassmann, *Krieg und Defension am Oberrhein: Die vorderen Reichskreise und Markgraf Ludwig Wilhelm von Baden (1693–1706)* (Berlin, 2000); S. Wefers, 'Versuch über die "Aussenpolitik" des spätmittelalterlichen Reiches', *Zeitschrift für Historische Forschung*, 22 (1995), pp. 291–316; and Lavery, *Germany's northern challenge*. Also useful for understanding early modern statehood: G. Chittolini, 'The "private", the "public", the state', *Journal of Modern History*, 67 (1995), supplement, pp. 34–61.

their relative efficiency in contrast to older studies.<sup>28</sup> This research likewise presents a varied picture of change over time that is further complicated by geographical differences as some institutions functioned better in parts of the Empire than in others.

These variations over time and space in the Empire's institutions and actions do not mean that we should revert to the old failed nation state thesis. Nor should we resurrect any unreconstructed concept of a German *Sonderweg*, or 'special path' whereby central European development diverged fatally from that of liberal western Europe and headed irresistibly towards Hitler and the Holocaust.<sup>29</sup> The institutional structures and practices of France, Spain, England, and other early modern European states were hardly even either. However, such unevenness within the Empire makes it difficult to interpret its political structure.

#### IV

All the perspectives discussed here suffer from a common flaw in that they try to apply a single category to the Empire or at least define it in terms of a predominant characteristic. Recognizing this, however, does not mean that we need to return to Pufendorf and to label the Empire as an irregular body that defies simple explanation. Instead, the Empire can be interpreted by tracing three distinct currents of political development that co-existed in different combinations throughout the entire early modern period. Thus, at first glance, the Empire can appear a monarchy, federation, or a distinct feudal hierarchy depending on which time frame is being examined. Yet, underneath the predominant characteristic of any given age, the other two currents will still be present, sometimes pushing development along a common path, sometimes pulling in the opposite direction. Moreover, these currents contained substrands that were variously more prominent at different times and in different places, depending on the circumstances. Identifying these differences is, of course, the task of empirical research, but the model at least offers a framework through which the diverse findings can be presented as an intelligible whole.

First, monarchy. The notion of the Empire as an aristocracy is primarily the product of a time-bound, largely Protestant critique of the Habsburg dynasty. The emperor remained sovereign, exercising practical power as well as enjoying considerable prestige. Whilst the idea that he sought to establish some form of 'imperial absolutism' remained a propaganda device of his opponents, it nonetheless reflected the fact that there were times when the emperor sought to enhance his authority and, moreover, real chances that this could be achieved.<sup>30</sup> The key to understanding these claims is to recognize that the monarchy discussed here was imperial, rather than royal. While the Habsburgs possessed other royal

<sup>28</sup> Good examples include A. Schindling, *Die Anfänge des Immerwährenden Reichstags zu Regensburg* (Mainz, 1991); K. Härter, *Reichstag und Revolution, 1789–1806* (Göttingen, 1994); J. A. Vann, *The Swabian Kreis: institutional growth in the Holy Roman Empire, 1648–1715* (Brussels, 1975); W. Sellert, ed., *Reichshofrat und Reichskammergericht* (Cologne, 1999); and the literature survey by K. Härter, 'Neue Literatur zur höchsten Gerichtsbarkeit im Alten Reich', *Jus Commune*, 21 (1994), pp. 215–40.

<sup>29</sup> Good discussions of the application of the *Sonderweg* thesis to the early modern period in T. A. Brady, *Communities, politics and Reformation in early modern Europe* (Leiden, 1998), and W. W. Hagen, 'Descent of the *Sonderweg*: Hans Rosenberg's history of old-regime Prussia', *Central European History*, 24 (1991), pp. 24–50.

<sup>30</sup> For example, the debate on Emperor Ferdinand II: A. Wandruszka, 'Zum "Absolutismus" Ferdinands II.', *Mitteilungen des Österreichischen Landesarchivs*, 14 (1984), pp. 261–8; H. Haan, 'Kaiser Ferdinand II. und das Problem des Reichsabsolutismus', *Historische Zeitschrift*, 207 (1968), pp. 297–345.

crowns in Bohemia and Hungary, the imperial title remained distinct and closely associated with the medieval conception of the Empire as embodying Christendom and the direct descendant of ancient Rome. The understanding of this imperial past was always mediated by subsequent events, notably Charles V's rejuvenated imperial ideal of the early sixteenth century, as well as the emperor's relations with other monarchies and empires, like those of the Ottomans and Russians.<sup>31</sup> What the Habsburgs sought was pre-eminence over other rulers, rather than their direct subordination, and this supremacy could more often be achieved through fostering consensus within imperial politics than by coercion.

Secondly, federalism. The federal element within the Empire went beyond the macro and micro aspects identified by Helmut Neuhaus and Maiken Umbach and that are primarily associated with the *Kreise* and the princely territories. Federalism was present in other forms of association within imperial political culture that had their roots in the later middle ages. These included the leagues of imperial counts, knights, and cities, as well as inter-communal movements of ordinary people and alliances between provincial and territorial estates (*Landstände*).<sup>32</sup> As Peter Blickle and Tom Brady have demonstrated, the popular communal forms of association offered an alternative route towards statehood by 'turning Swiss' and establishing federations of urban and rural communities.<sup>33</sup> However, this form was not exclusively a movement of the common man, because alliances between the aristocratic-dominated territorial estates also displayed the potential for more permanent forms of political organization. Recent studies indicate common ground amongst the nobilities of the different Habsburg lands and indeed those of their immediate eastern neighbours. This provided the basis for what has been described as a confederal movement in the early seventeenth century, culminating in the Bohemian Confederation of 1619. Bohemia accepted parity with the other crown provinces, lending an important modern characteristic to the confederation.<sup>34</sup> Though suffering internal dissension, the Confederation proved capable of a major military effort and was only defeated with considerable difficulty by the Habsburgs in 1620.

Thirdly, hierarchy. The element of equality inherent, or at least implied, in such associations was inimical to the Empire's feudal hierarchy that constituted the third element of its political structure. All *Reichsstände* were bound as vassals to the emperor, but in ways that were often indirect and mediated by overlapping and fragmented jurisdictions. The

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For another example, see V. Press, 'Die Bündnispläne Kaiser Karls V. und die Reichsverfassung', in his *Das alte Reich. Ausgewählte Aufsätze* (Berlin, 1997), pp. 67–127.

<sup>31</sup> J. M. Headley, 'Gattinara, Erasmus and the imperial configurations of humanism', *Archiv für Reformationsgeschichte*, 71 (1980), pp. 64–84, and his 'The Habsburg world empire and the revival of Ghilbellinism', *Medieval and Renaissance Studies*, 7 (1978), pp. 93–127.

<sup>32</sup> H. Carl, *Der Schwäbische Bund, 1488–1534* (Leinfelden-Echterdingen, 2000); V. Press and D. Stievermann, eds., *Alternativen zur Reichsverfassung in der Frühen Neuzeit?* (Munich, 1995); G. Schmidt, *Der Wetterauer Grafenverein* (Marburg, 1989), and his 'Die politische Bedeutung der kleineren Reichsständen im 16. Jahrhundert', *Jahrbuch für Geschichte des Feudalismus*, 12 (1989), pp. 185–206.

<sup>33</sup> T. A. Brady, *Turning Swiss: cities and empire, 1450–1550* (Cambridge, 1985).

<sup>34</sup> R. J. W. Evans and T. V. Thomas, eds., *Crown, church and estates: central European politics in the sixteenth and seventeenth centuries* (New York, 1991); J. Bahlcke, 'Die Böhmisches Krone zwischen staatsrechtlicher Integrität, monarchischer Union und ständischen Föderalismus', in Fröschl, ed., *Föderationsmodelle*, pp. 83–103; J. Pánek, 'Das politische System des böhmischen Staates im ersten Jahrhundert der habsburgischen Herrschaft (1526–1620)', *Mitteilungen des Instituts für Österreichische Geschichte*, 97 (1989), pp. 53–82, and his 'Das Ständewesen und die Gesellschaft in den böhmischen Ländern in der Zeit vor der Schlacht auf dem Weissen Berg (1526–1620)', *Historic: les sciences historiques en Tchécoslovaquie*, 20 (1985), pp. 73–120.

changes associated with the emergence of the *Reichstag* in the later fifteenth century proved fundamental in giving permanent shape to this complex hierarchy.<sup>35</sup> The separation of the *Reichsstände* as a privileged elite with unmediated ties to the emperor set them above all other lords and corporations within the Empire. The tripartite division of the *Reichsstände* into separate colleges of electors, princes, and cities established more graduations that were overlaid in the case of the first two by the division between secular and ecclesiastical lords. Further distinctions stemmed from the internal ranking amongst the members of each of the *Reichstag's* three colleges. However, all remained within the same system since the parallel establishment of the public peace and associated judicial framework reached down to the level of subject territorial lords, corporations, and communities. German Freedom was an expression of this hierarchy and cannot be disassociated from it. Imperial political culture remained wedded to the belief in the sanctity of corporate rights and responsibilities. The diffusion of conflict through legal arbitration and administrative review expressed this in practice. While this offered some protection to the weak against the strong, it was also fundamentally socially conservative, dampening moves towards more genuinely democratic political representation.<sup>36</sup>

Monarchy, federalism, and hierarchy were not mutually exclusive and could reinforce each other under certain circumstances. However, none of them was timeless and unchanging and nor were the wider circumstances affecting the Empire's development, such as social and economic activity and the structure of European international relations. The Empire needed monarchy to remain imperial. It needed federalism to make parts of its infrastructure work and to foster consensus required for common action, at least on the regional level of the *Kreise*. But ultimately it had to remain hierarchical to sustain the web of corporate rights and privileges on which the entire structure rested. Destruction of key elements of this hierarchy through the mediatization of most of the minor territories in 1801–5 ensured not only the Empire's demise, but also prevented its resurrection at the Congress of Vienna. Germany's future lay with federalism, for the moment still tied to monarchy, but later freed from this to become republican and democratic.

<sup>35</sup> P. Moraw, 'Versuch über die Entstehung des Reichstages', in H. Weber, ed., *Politische Ordnungen und soziale Kräfte im Alten Reich* (Wiesbaden, 1980), pp. 1–36.

<sup>36</sup> I have elaborated this argument at greater length in my *From Reich to revolution: German history, 1550–1806* (Basingstoke, 2004).