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IMPERIAL DIGNITY TO PRINCELY AUTONOMY

A HISTORICAL-PHILOSOPHICAL STUDY ON THE EVOLUTION AND MEANING OF SOVEREIGNTY IN THE HOLY ROMAN EMPIRE

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A B S T R A C T

The goal of this thesis is to conduct a study in conceptual history into the meaning of sovereignty within the Holy Roman Empire, a European political institution of states that lasted from 962 to 1806 AD. Three classical theorists in sovereignty, namely Jean Bodin, Thomas Hobbes, and Samuel von Pufendorf comprehend the main philosophical corps of the thesis, which will be operationalised by studying three constitutional documents from the Holy Roman Empire: the Golden Bull, the Treaty of Osnabrück, and the Treaty of Münster. It is concluded that a significant detraction took place within these three centuries: the mantle of an 'imperial dignity,' the joint sovereignty of the Emperor and the Prince-Electors, was abandoned in favour of particularist sentiment of national sovereignty, which can be explained by advances in philosophical thought and changes in international norms.

KEYWORDS: Sovereignty, political philosophy, Holy Roman Empire, Golden Bull, Westphalia

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1. INTRODUCTION

The Holy Roman Empire may well have been one of Europe's most complex political institutions, with Voltaire famously writing that it was 'neither holy, nor Roman, nor an empire.'[1] This is undoubtedly a sardonic dramatisation of reality, though it reveals some undercurrents of how the Holy Roman Empire is popularly perceived: that of a gargantuan, labyrinthine, and undefinable construct of a state. Questions such as where authority lay, how its member states operated, and how its political and legal system functioned are likely of little interest to a general public, who will be contented knowing that none of the terms 'Holy,' 'Roman,' or 'Empire,' accurately corresponded to its quotidian administration. This thesis aims to focus on the first part of that statement: where did authority rest in this enigma under the appellation of Empire? More precisely, the main part of this thesis will discuss and analyse the concept of sovereignty within the Holy Roman Empire by delving into a few of its constitutional documents, namely the Golden Bull of 1356 and the 1648 Treaties of Münster and Osnabrück[2] and identifying whether or not this core concept of sovereignty changed between the two dates, and if so, how this is expressed. The philosopher who introduced the concept of sovereignty within political science, Jean Bodin in *Les six livres de la République* (hereinafter referred to as *De la République)*, is especially important in this context. Moreover, the analysis is methodologically carried out through the lens of conceptual history within a comparative framework, which renders it necessary to include much later theorists, amongst which Lassa Oppenheim's *International Law: A Treatise* lucidly deals with the historical and contemporary issues on the matter of sovereignty. This attempt to excavate meaning from three legal historical documents is made feasible by scrutinising how each respective text treats the office of the Holy Roman Emperor, who in this thesis is considered by abstraction the nominal high sovereign of the Empire, in relation to the Imperial Estates,[3] who are similarly abstracted to sovereign actors in their own right.

[1] Original quote in French : 'Ce corps qui s'appelait et qui s'appelle encore le saint empire romain, n'était en aucune manière ni saint, ni romain, ni empire,' Voltaire, *ESSAI SUR LES MOEURS ET ~ESPRIT DES NATIONS, ET SUR LES. PRINCIPAUX FAITS DE L'HISTOIRE, DEPUIS CHA~RLEMAGNE JUSQU'A LOUIS XIII*, 1829, published by the Bibliothèque nationale de France, available at <https://gallica.bnf.fr/ark:/12148/bpt6k37524n/texteBrut>, Chapitre LXX, ligne 30, accessed 17 May 2021.
[2] Commonly known as the Peace of Westphalia. This term will be used frequently in the thesis.
[3] Also known as the Imperial States; the member states of the Holy Roman Empire.

1.1. PURPOSE AND RESEARCH QUESTION

This thesis will present, investigate, and analytically discuss the historical evolution of meaning regarding the concept of sovereignty within the Holy Roman Empire between the 14th and 17th centuries: accentuated by the Golden Bull and the Peace of Westphalia, three legal documents which embodied the Constitution of the Holy Roman Empire. Utilising historical and contemporary philosophical perspectives and theories[4] on sovereignty, in addition to using conceptual history as a method and continuing from previous scholarly dissertations,[5] the thesis aims to comparatively analyse the continuity and change in sovereignty's meaning as it was implicitly and explicitly articulated in the law of the Empire and its Estates.

Reasons for this particular choice of subject are two-fold; there is a dearth of current literature on the subject,[6] which might suggest a lack of current scholarly interest, which has to be addressed; further, through interest and inferences alike about a lack of general knowledge of the subject, compounds the reasoning into a societal imperative to maintain this ill-updated repository of the Holy Roman Empire. Indeed, though this complex political construction lasted nearly a millennium[7] in Europe it seems to have gained less popular attention than the Roman Empire, its namesake, for reasons far beyond the purview of this thesis. Nevertheless, this work will hopefully serve to illuminate this somewhat dark corner of knowledge and be of some utility both for the fields of history and political philosophy.

The research questions are as follows: how is the concept and phenomenon of sovereignty, implicitly or explicitly, manifested, within the texts comprehended by the Golden Bull and the Peace of Westphalia, three 14th and 17th century legal-political documents from the Holy Roman Empire? What are the changes over time regarding the meaning of sovereignty?

[4] Namely the theories of Jean Bodin, Thomas Hobbes, Samuel von Pufendorf, and Lassa Oppenheim, who will all be industriously outlined in Chapter 4.
[5] By Peter Schröder, who is detailed in Chapter 3.1.
[6] Going by Lund University Publications (accessed at <https://lup.lub.lu.se/search/>) and Lund University Publications Student Papers (accessed at <https://lup.lub.lu.se/student-papers/search/>), the number of published texts about the Holy Roman Empire, with the keywords 'holy,' 'Roman,' and 'empire,' numbers in total six publications. Expanding the search queries by using Swedish variants of the keywords broadens it, though most do not primarily concern the political actor but simply mention it as part of another study.
[7] Dependent on whether or not Charlemagne and Louis I are included in the chronology, otherwise the Holy Roman Empire as re-established by Otto I in 962 AD lasted for a total, unbroken, and territorially shrinking period of 844 years, ending with the abdication of Francis II in 1806, with more information in Chapter 2.1.

2. HISTORICAL BACKGROUND

2.1. GENERAL OVERVIEW

The Holy Roman Empire[8] was a political institution of Central and Southern European states between 800 and 1806 AD.[9] It was first established upon the coronation of Charlemagne[10] as Emperor of the Romans[11] by Pope Leo III, which was a revival of the Roman Empire by the *renovatio imperii*.[12] The Holy Roman Empire had a tumultuous and conflict-ridden relationship with the temporal seat of the Roman Catholic Church, the Papal State; the Pope and the Holy Roman Emperor were oft embroiled in conflicts of doctrine and ecclesiastical authority. In particular, the secular power to appoint bishops[13] within the lands of the Holy Roman Empire was contested by the Papacy during the Investiture Controversy; a conflict that the Pope eventually emerged the victor of.[14] Religious conflicts were again at the forefront during the Protestant Reformation, culminating in the outbreak of the Thirty Years' War in 1618, a conflict that mostly took place within the Empire itself. The last Holy Roman Emperor,[15] Francis II, abdicated in 1806 after the French Imperial victory at Austerlitz and the establishment of the

[8] A short note on the usage of 'Holy Roman Empire.' Initially, and formally, this realm was referred to as as either the Roman Empire or the Holy Empire (or some variation thereof, such as Christian Empire (lat. imperium Christiarum), as it was originally established as the legal successor to the Roman Empire. The promulgation of being the Holy Roman Empire appeared sometime after the reign of Frederick I in the 13th century. J. Bryce, *The Holy Roman Empire*, London: MacMillan & Co., ltd., 1904, reprinted by Forgotten Books, 2018, ch. XII, pp. 199-201.

[9] Ibid., ch. 1, pp. 1-3.

[10] Also known as Charles the Great, Charles I, or Latinised as Carolus Magnus. He was of the Carolingian dynasty, and his realm and successors came to dominate much of Western and Central Europe, either united under one Carolingian (or Holy Roman) Empire, or later through fragmented successor kingdoms, up until Otto I again united the lands that would become the Holy Roman Empire in 962 AD. Ibid., ch. IV, pp. 34-48 and ch. VI, pp. 77-88.

[11] Lat. *imperator Romanorum*.

[12] The full term is *renovatio imperii Romanorum*, trans. "renewal of the empire of the Romans." At the time of Charlemagne's coronation, the Eastern Roman (or Byzantine) Empire was ruled by Empress Irene; the recognition of Charlemagne as Roman Emperor by the Christian Church was therefore a rejection of the legitimacy of Irene as ruler of the so-called universal monarchy of Rome. J. Bryce, op. cit., p. 47.

[13] Also known as investiture.

[14] The Concordat of Worms in 1122 resolved the conflict; the Holy Roman Emperor received power of appointed bishops "through the lance," and could preside over their elections. From the Privilege of Pope Calixtus II:

> I, bishop Calixtus … do grant to thee … Henry-by the grace of God august emperor of the Romans-that the elections of the bishops and abbots of the German kingdom, who belong to the kingdom, shall take place in thy presence (…) The one elected … may receive the regalia from thee through the lance …"

Likewise, the Holy Roman Emperor surrendered entirely the right to invest bishops, including popes (who himself is a bishop). From the Edict of Emperor Henry IV:

> In the name of the holy and indivisible Trinity, I, Henry … for the love of God and of the holy Roman church and of our master pope Calixtus … do remit to God, and to the holy apostles of God, Peter and Paul, and to the holy catholic church, all investiture through ring and staff; and do grant that in all the churches … there may be canonical election and free consecration. All the possessions and regalia of St. Peter which …have been abstracted, and which I hold: I restore to that same holy Roman church.

From 'Documents relating to the War of the Investitures – Concordat of Worms; September 23, 1122,' *The Avalon Project*, Yale Law School, available at <https://avalon.law.yale.edu/medieval/inv16.asp>, accessed 4 May 2021.

[15] And first Emperor of Austria.

Confederation of the Rhine,[16] thus abolishing the institution of the Holy Roman Empire.

As an aside, the elective system of the Holy Roman Empire was one of its defining institutions which revolved around consuetudinary Prince-Electorships, influential nobles and clergymen who elected the Holy Roman Emperor. After the Imperial Diet passed the Golden Bull, the number of Electors was fixed to seven,[17] which included the religious Archbishoprics of Mainz, Treves,[18] and Cologne; and the secular Kingdom of Bohemia, the Duchy of Saxony, the County Palatine of the Rhine, and the Margraviate of Brandenburg.

2.2. CONSTITUTION AND LAW IN THE HOLY ROMAN EMPIRE

As has been mentioned earlier, the Golden Bull of 1356 and the Westphalian treaties are considered to be proto-constitutional within the legal system of the Holy Roman Empire. The reason for this terminology rests on these texts' form and function: they served to clarify the privileges of the Imperial Estates, to establish the circumstances[19] surrounding the election of the Holy Roman Emperor, and to put into print existing practices[20] or confirm previous treaties.[21] For example, article CXX of the Treaty of Münster[22] specifically classify that the Treaty itself be constitutional. Additionally, they were adopted after periods of notable strife,

[16] Which encompassed a large swathe of the remaining states of the Holy Roman Empire, excepting the Kingdom of Prussia and the Empire of Austria. Indeed, the treaty establishing it, the *Rheinbundakte*, stated that the high contracting parties ' (…) seront séparés à perpétuité du territoire de l'Empire germanique et unis entre eux par une confédération particulière sous le nom d'Etats confédérés du Rhin.' Traité de la Confédération du Rhin, 12 juillet 1806, Digithèque de matériaux juridiques et politiques, available at <https://mjp.univ-perp.fr/mjp.htm>, article 1er, accessed 17 May 2021.
[17] 'The Golden Bull of the Emperor Charles IV 1356 A.D.,' [Golden Bull] *The Avalon Project*, available at <https://avalon.law.yale.edu/medieval/golden.asp>, para. 4, accessed 17 May 2021.
[18] Or Trier.
[19] Such as formalising the city of Frankfurt as the location wherein the election of the Holy Roman Emperor is held and the order of proceedings for the Prince-Electors. Golden Bull, op. cit., paras. 1-2, 32.
[20] The independence of the Swiss Confederation was de jure established by Article VI of the Treaty of Osnabrück. Peace Treaty of Osnabrück between Emperor Ferdinand III and Queen Christina of Sweden and their respective allies, Osnabrück (October 14/24, 1648) [Treaty of Osnabrück], *German History in Documents and Images*, German Historical Institute, available at <https://ghdi.ghi-dc.org/pdf/eng/87.%20PeaceWestphalia_en.pdf>, Article VI,, accessed 17 May 2021.
[21] For example, Article V, § 1 of the Treaty of Osnabrück solely reconfirmed the 1552 Peace of Passau and 1555 Peace of Augsburg. Ibid., Article V, § 1.
[22] The relevant part of the article:

> For the greater Firmness of all and every one of these Articles, this present Transaction shall serve for a perpetual Law and establish'd Sanction of the Empire, to be inserted like other fundamental Laws and Constitutions of the Empire in the Acts of the next Diet of the Empire, and the Imperial Capitulation; binding no less the absent than the present, the Ecclesiasticks than Seculars, whether they be States of the Empire or not: insomuch as that it shall be a prescrib'd Rule, perpetually to be follow'd…

The language used here contains some universal presuppositions, though its provisions regarding the Estates' privileges are still unique to the Holy Roman Empire. 'Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies,' [Treaty of Münster] *The Avalon Project*, op. cit., available at <https://avalon.law.yale.edu/17th_century/westphal.asp>, Article CXX.

turmoil, and disastrous conflict: the Golden Bull marked the end of institutional electoral uncertainty and severed the World-Church of Roman Catholicism from partaking in the election of the Holy Roman Emperor,[23] and the Peace of Westphalia concluded the Thirty Years' War.

Regarding the relation between the secular and the religious spheres, which is central to the analytical discussion on the evolution of meaning of sovereignty, it becomes apparent to discuss the Peace of Augsburg.[24] This was the result of Emperor Charles V's[25] order to resolve conflicts between Catholics and Protestants, which resulted in the principle of *cuius regio, eius religio*, or the affirmation of the exclusive right of Imperial princes in matters of religion within their own legal territory. This devolvement of religious authority on the side of the Holy Roman Emperor can be argued to comprehend the first secularisation of sovereignty; one aspect of state affairs was no longer subject to intervention by a monarch of the Catholic denomination.

[23] Though not in the coronation of him.
[24] The Religious Peace of Augsburg, 1555, courtesy of E. Reich (ed.), Select Documents (London 1905), 230-232, University of Oregon, available at <https://pages.uoregon.edu/sshoemak/323/texts/augsburg.htm>, accessed 18 May 2021.
[25] Who was also King of Spain, which at the time included Naples and Sicily; Duke of Burgundy, which included parts of the Low Countries; as well as ruling over vast colonial dominions. J. Bryce, op. cit., pp 371-372.

3. LITERATURE

3.1. PREVIOUS RESEARCH

Two earlier academic works that dwelled on the status of sovereignty within the Holy Roman Empire are represented by two of the theorists utilised in this thesis: Jean Bodin's *Les six livres de la Republique* and Samuel von Pufendorf's *De statu imperii Germanici*.[26] Bodin considers sovereignty secondarily,[27] mainly focusing on the constitutional form of the Holy Roman Empire, which he maintained was aristocratic. Since he defined sovereignty[28] as 'absolute and perpetual,' it can be presumed that Imperial sovereignty was of a weak nature, shared or relegated to the influential Estates. Samuel von Pufendorf argued against Bodin's constitutional application and expanded sovereignty to comprehend some form of a legal framework restricting the actual sovereign.

A later analysis of von Pufendorf's arguments by Peter Schröder[29] has also been made. Schröder concludes that von Pufendorf's arguments are the most accurate portrayal of the constitutional reality of the post-Westphalian Holy Roman Empire and agrees in his criticism of simplistic assumptions of absolutist sovereignty outside it. The importance of the organisation of the state itself amongst these authors' intellectual assessments has been accounted for within this thesis' theoretical background and utilised as a factor in its analytical section.

3.2. MATERIAL

The texts of the Golden Bull and the treaties of Osnabrück and Münster are the primary sources for this thesis' analysis; they were chosen due to their historical significance both pertaining to the constitutional law of the Holy Roman Empire and to their contribution to international norms. The documents are modern English translations contributed by Yale Law University; the original Latin texts are not as readily available. Nevertheless, as this thesis aims to analyse philosophical

[26] *De statu imperii Germanici* is the Latin title for his work *The Present State of Germany*.
[27] When discussing the Holy Roman Empire. Other parts of the book are devoted to the meaning of sovereignty.
[28] See Chapter 4.1 for a complete discussion of Bodinist sovereignty.
[29] P. Schröder, 'The Constitution of the Holy Roman Empire,' in *Historical Journal*, December 1999, vol. 92, no. 4, published by Cambridge University Press, accessed by JSTOR, available at <https://www.jstor.org/stable/3020932?seq=1> [web document], accessed 24 April 2021.

concepts, the usage of the original language is not considered to be vital for the general analysis.

In the way of philosophical works, *De la République* by Jean Bodin, *Leviathan* by Thomas Hobbes, and *De statu imperii Germanici* by Samuel von Pufendorf have been utilised. The abovementioned essay by Peter Schröder is also included, as is Lassa Oppenheim's *International Law: A Treatise* due to their invaluable contributions in the historical development of the meaning of sovereignty. On the basis of this thesis' philosophical nature, none of these works will be textually scrutinised or critically assessed as that would significantly alter its analytical scope and research questions.

4. PHILOSOPHICAL AND THEORETICAL PERSPECTIVES

4.1. SOVEREIGNTY

The German jurist and international relations theorist Lassa Oppenheim expressed the following about sovereignty:

> From the foregoing sketch of the history of the conception of sovereignty it becomes apparent that there is not and never was unanimity regarding this conception [of sovereignty]. It is therefore no wonder that the endeavour has been made to eliminate the conception of sovereignty from the science of politics altogether … so that States with and without sovereignty would in consequence be distinguishable. It is a fact that sovereignty is a term used without any well-recognised meaning except that of supreme authority.[30]

Aside from presenting a practical argument for the removal of sovereignty within political science, Oppenheim astutely formulates the complex history of the usage and meaning of sovereignty; a problem that will become apparent in this thesis. This chapter will discuss a few of the early theorists of sovereignty, namely Jean Bodin, Samuel von Pufendorf, and Thomas Hobbes, and explain their differing as well as converging ideas of what constitutes the sovereign power of a State. Further, the history of Catholic religious legitimation of sovereignty within the context of the Holy Roman Empire will be briefly outlined, since religious elements of sovereignty were inseparable from secular aspects based on the historical context surrounding the founding of Empire as well as it being a part of the philosophical tradition at the time. Another point of clarification will afterwards be made, concerning the divisibility or indivisibility of sovereignty, which is a more recent theoretical conflict; lastly, a short formal discussion of the constitutional form of the Holy Roman Empire will be had, due to it being a central argument in which both Jean Bodin and Samuel von Pufendorf base their reasonings either about sovereignty in general or how sovereignty can be interpreted specifically within an Imperial context.

[30] L. Oppenheim, *International Law: A Treatise*, 2nd ed., vol. 1, § 70, accessed at Project Gutenberg, available at <http://www.gutenberg.org/files/41046/41046-h/41046-h.htm>, accessed 21 April 2021.

4.1.1. JEAN BODIN

Sovereignty as an inherent part of the composition of a State has a complicated and decidedly unagreed history; Jean Bodin first utilised the term as a descriptor in political science for the concept of state absoluteness. According to him, 'Sovereignty is the absolute and perpetual power of a Republic…'[31] and something that no-one had yet managed to define,[32] echoing Oppenheim's similar declaration in the abovementioned quotation, albeit a good four centuries earlier. Moreover, he maintained that the sovereign[33] was bound both by natural and divine laws,[34] much similar to other theorists such as Thomas Hobbes, who will be discussed below, and Jean-Jacques Rousseau.[35] Another shared similarity rests in the assumed singularity in the manifestation of power; there can not be any concessions regarding absolute power, since, if any were given, it would be absolute no longer. This does not mean that sovereignty must be concentrated to one or a few individuals, as that would disqualify some of the Aristotelian classifications, but that the entity which possesses sovereignty does so absolutely: namely, that it can exercise all functions of sovereign power without restriction. Oppenheim explains it[36] as being 'the sovereignty of the State and sovereignty of the organ which exercises the power of the State,' and though this is a modern interpretation, it extracts that which Bodin, or indeed most early theorists, do not: that the State itself is the original sovereign. Further, pragmatically, 'a State, as a Juristic Person, wants organs to exercise its powers,'[37] and this practical aspect is absent with these early philosophers.[38] As the first prominent scholar to define and utilise the term of sovereignty within the

[31] Translated from French. Original quote is 'La souveraineté est la puissance absolue & perpetuelle d'une République…' J. Bodin, *Les six livres de la République*, 1579, provided by Google Books, available at <https://books.google.com.br/books?id=Ah0Lz-at014C&printsec=frontcover&source=gbs_ge_summary_r&hl=en#v=onepage&q&f=false>, accessed 14 May 2021, p. 85.

[32] Bodin writes that

> Il est icy besoin de former la definition de la souveraineté, parce qu'il n'y a ny Iurisconsulte [avocat], ny philosophe politique, qui l'ayt définie…

Which only serves to reinforce the historical intransigence of philosophers and thinkers on the subject. Ibid.

[33] The sovereign does not have to be a person; it is simply the entity which possesses supreme power.

[34] *Jean Bodin*, Stanford Encyclopedia of Philosophy, updated 30 July 2018, available at <https://plato.stanford.edu/entries/bodin/>, 4. Bodin's Politics: Sovereignty or Absolutism, accessed 14 May 2021.

[35] *Jean-Jacques Rousseau*, ibid., updated 26 May 2017, available at <https://plato.stanford.edu/entries/rousseau/>, accessed 14 May 2021.

[36] L. Oppenheim, op. cit., § 69, para. 3.

[37] Ibid.

[38] In Bodin's defence, no reasonable character would claim that a State can be administered entirely by one or a few individuals. The Juristic Person of the Sovereign State that Oppenheim speaks of is a codification of the assumed, a clarification of the unwritten assumptions that must exist in debates of sovereign power and the exercise thereof.

science of politics,[39] he opened a new chapter in the arduous book of political philosophy.

4.1.2. THOMAS HOBBES

In the case of Hobbesian sovereignty, the sovereign itself is the temporal embodiment of the collective will and want of the people; further, the purpose of the sovereign is to act as an unrestricted[40] enforcer of the social contract. In this thesis, Thomas Hobbes' quite rigid and absolute qualifications for sovereignty will be of highest relevance. A common denominator for most theories of sovereignty is that the entity which claims it may be in a variety of forms, such as that of a monarch, several oligarchs, a parliament, or something else; its distinguishing feature is their lack of a higher, and superseding, authority; though Hobbes defined the sovereign simply as the one who holds power, he, like Jean Bodin, preferred the sovereign to be a monarch.

4.1.3. SAMUEL VON PUFENDORF

Subsequent theorists elaborated further on Jean Bodin's idea of sovereignty supreme executive power of a state, either underlining that sovereign power may be restricted by a constitution and other laws, or that it is fundamentally unbound by anything whithersoever and may be used to exercise control over both temporal[41] and religious matters.[42] Samuel von Pufendorf belongs to the former category[43] of theorists in matters of sovereignty, though he maintained a close relation between the form of the State and of sovereignty, which will be explored in section 4.2. He defined that

> [T]he Sovereign Command is, by no means, such an entire Compound Being as is made up of Heterogeneous Parts, which as they are join'd and knit together, by some common Band, compose one Body, yet so as that each Part is capable of subsisting separately by its self.[44]

[39] P. Schröder, op. cit., p. 962.
[40] Meaning that the sovereign is not bound to any laws or other principles under the social contract that they are the guardian of.
[41] Such as socio-political.
[42] T. Hobbes, *Leviathan*, London: Everyman's Library, 1976, part II, ch. XIX, pp. 90-96.
[43] S. Pufendorf, *De jure naturae et gentium*, VII. c. 6, §§ 1-13, cited in L. Oppenheim, op. cit., § 67, para. 2.
[44] S. Pufendorf, *Of the law of nature and nations*, trans. B. Kennet (London, I 7 I 7), p. 490 (VII- 4, p. 1.), cited in P. Schröder, ibid., p. 965.

This is a negative definition of sovereignty that may well be used with special distinction regarding the Holy Roman Empire. However, he argues against both Jean Bodin and Thomas Hobbes in that he denies[45] absolutism as a metric by which sovereignty is held; however, supreme power remains a defining aspect of the State.

4.1.4. IN RELATION TO RELIGION

None of the abovementioned philosophers considered the sovereign to be above divine law. Even if they should be the temporal governor of religious matters, like Thomas Hobbes postulates, the sovereign is still ultimately held accountable to the divine, and for all these theorists, answerable to God. Likewise, as mentioned in Chapter 2, the Holy Roman Empire was established by the papal authority of the Holy See, which only entrenched the primacy of the Christian faith[46] within the Empire.

4.1.5. DIVISIBILITY AND INDIVISIBILITY

A historical point of contention rests upon the indivisibility or divisibility of sovereign power. Lassa Oppenheim argues[47] that the introduction of 'half-sovereignty' was a cause of the Peace of Westphalia, which resulted in the theoretical schism between those who followed the principle of sovereignty undivided and those who, in direct opposition, believed it to be divisible. Thomas Hobbes vehemently maintained that the power of the sovereign entity was undivided and that any partition of it would be impossible; this idea of indivisibility was shared by Jean-Jacques Rousseau,[48] though he considered sovereignty to be inherent and non-transferable to a people. The later advent of constitutional federal states,[49] whereby member-states explicitly shared power in a larger Union, such as the German Empire and the United States of America, further exemplifies this conflict.

[45] L. Oppenheim, loc. cit.
[46] After the Great Schism this took shape in the Catholic denomination.
[47] L. Oppenheim, op. cit., § 68.
[48] Ibid.
[49] Ibid., § 69, para. 3.

4.2. CONSTITUTIONAL FORM

It is imperative to clarify another historical issue that entangles the Holy Roman Empire, and that is its constitutional form; Jean Bodin[50] and other contemporary writers utilised the classical Aristotelian[51] categorisations of government as their framework, which was repudiated[52] by Samuel von Pufendorf, who proposed that the system of the Holy Roman Empire was irregular, drawing on the Hobbesian view of regular and irregular states:

> By SYSTEMES; I understand any numbers of men joyned in one Interest, or one Businesse. Of which, some are *Regular*, and some *Irregular*. *Regular* are those, where one Man, or Assembly of men, is constituted Representative of the whole number. All other are *Irregular*.[53]

The multifarious and complex administration of the Holy Roman Empire, as well as its many different echelons of Estates, led Samuel von Pufendorf to arrive at this conclusion, which was a fundamental turn[54] from previous authors' assertions.

[50] P. Schröder, loc. cit.
[51] Aristotle presented six forms of government in his *Politics*. Three of which are considered pure: (1) monarchy, or kingship; (2) aristocracy: and (3) constitutional government. These collectively follow the principle in ruling for the common good of all; the remaining three, which he calls (4) tyranny, (5) oligarchy, and (6) democracy, are considered perversions of the pure forms as they rule for the 'interest of the monarch only … oligarchy has in view the interest of the wealthy; democracy, of the needy… 'Aristotle [Aristotle] & J. Barnes (ed.), *The Complete Works of Aristotle*, vol. II, Princeton: Princeton University Press, 1996, *Politics*, trans. B. Jowett, Book III, p. 2030.
[52] P. Schröder, op. cit., pp. 963-964.
[53] T. Hobbes, op. cit., ch. XXII, p. 117.
[54] P. Schröder, loc. cit.

5. METHODOLOGY

5.1. COMPARATIVE ANALYSIS

This thesis will be structured in, and conducted with the academic tradition of, a qualitative comparative analytical framework. The cross-historical and regimented case studies also contribute to the validity and suitability of utilising comparative analysis, due to those two factors being traditionally associated[55] with this type of study. Further, it is also an illustrative and fitting methodology on the basis of the thesis' simple case comparison, though it must be supplemented by other methods to remain scientifically viable; specifically, by conceptual history. This methodology will be fully expatiated in the following section, though the principal reasoning behind this selection is due to its complementary qualities: conceptual historical methodology aids in elaborating the history of the term sovereignty.

A comparative analysis utilised in concert with a conceptual-historical methodology will not only be helpful in establishing the differences in the meaning of sovereignty during certain historical periods; it may also run the risk of befuddling any clear lines of demarcation between the two methodologies. To that end, it becomes pertinent to mention that the comparative analysis will be more useful in demonstrating differences between two concrete documental cases whilst conceptual history will grasp the differences between various intellectual discourses. In both cases, a difference or progression concerning both the perception and understanding of sovereignty will be delineated.

5.2. CONCEPTUAL HISTORY

Supplementing the comparative approach to this thesis, the usage of conceptual history[56] will be central to the practical discussion of sovereignty within a lengthy historical purview, as well as providing an adequate theory on the relational history between time, semantics, and language. This is underpinned by Reinhart Koselleck's main body of work[57] and its deliberations on the evolving semantics[58]

[55] P. S. Gray et al., *The Research Imagination*, 2nd ed., New York: Cambridge University Press, 2012, pp. 326-327.
[56] J. Kurunmäki & J. Marjanen in 'Begreppshistoria,' *Textens mening och makt*, K. Boréus & G. Bergström (red.), 4th ed., Lund: Studentlitteratur AB, 2018, pp. 179ff.
[57] R. Koselleck & T. S. Presner, *The Practice of Conceptual History*, Stanford: Stanford University Press, 2002.
[58] J. Kurunmäki & J. Marjanen, op. cit., pp. 183-186.

of history will be highly valuable in the context of historical usages of sovereignty. The synchronic and diachronic approaches that he advocates will be paramount in the analysis of this thesis; it will be used to study, and likewise investigate, the fleeting meanings and the very concept itself of sovereignty. A vital, and hitherto alluded to, point of importance regarding sovereignty as a concept is that its formal usage began after the Peace of Westphalia, and thus a large part of this thesis will utilise a term of concept that did not exist prior to it; this is not, however, anachronistic, precisely because that which constitutes sovereignty, mainly political independence and territorial autonomy, are not unique to the idea of sovereignty. On the contrary, the various political theorists wherefrom this thesis draws its definitions, do speak about, for example, political organisation and sovereign power, which can be discussed without needing to excavate specific mentions of sovereignty. Jean Bodin and Samuel von Pufendorf[59] will be analysed in parallel due to them having commentated the Constitution of the Holy Roman Empire; further, von Pufendorf's analysis of the post-Westphalian constitutional reality of the Holy Roman Empire will be used as a point of reference whilst more abstracted philosophical discussions will be garnered from Thomas Hobbes.[60]

[59] Specifically, and respectively, *Les six livres de la Republique* & *De statu imperii Germanici*.
[60] Namely, his concept of sovereign power as written in *Leviathan*.

6. ANALYSIS

6.1. GOLDEN BULL

The Golden Bull of 1356 begins with a solemn declaration of the parties present:

> Every kingdom divided against itself shall be desolated. For its princes have become the companions of thieves. (…) [T]hrough the office by which we possess the imperial dignity, are doubly-both as emperor and by the electoral right which we enjoy- bound to put an end to future danger of discords among the electors … we have promulgated, decreed and recommended for ratification the subjoined laws for the purpose of cherishing unity among the electors, and of bringing about a unanimous election…[61]

Thomas Hobbes' description of the state of nature[62] springs to mind with the first sentence of this passage. Whilst this sentence does not refer to a *lex naturalis*, as it were, but of the internal state of affairs of the Holy Roman Empire, it still stands as a reference both cautioning against, and taking concrete steps to prevent, chaos and enmity amongst the Imperial Princes. However, the next formulation must be analysed through contemporary theories of sovereignty: it asserts that they, who are defined as the Prince-Electors, have 'the imperial dignity,' which is something held by both the Emperor himself and the Prince-Electors collectively; if an 'imperial dignity' can be utilised as an expression for sovereign power, several problems occur. Starting with a synchronic approach within the conceptual-historical framework,[63] the Bodinist theory of sovereignty[64] would likely take issue with this clear separation, or collaboration, of supreme power if it is seen as elevating non-imperial actors to that of the serenity and gravitas of the office of the Holy Roman Emperor; Jean Bodin himself considered the form of the Holy Roman Empire to be aristocratic,[65] which would justify this interpretation of shared authority. Likewise,

[61] Golden Bull, op. cit., paras. 1-2.
[62] Lat. *lex naturalis*. The full quote is:

> In such condition, there is no place for Industry … consequently no Culture of the Earth, no Navigation … no commodious Building; no Instruments of moving … no Knowledge of the Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.

From T. Hobbes, op. cit., part I, ch. 13, pp. 64-65.
[63] R. Koselleck & T. S. Presner, op. cit.
[64] This is the closest to a contemporary view of sovereignty within the scope of the Golden Bull.
[65] Jean Bodin maintains that:

> [L]es sept Electeurs ont peu à peu retranché la souveraineté, ne laissant rien à l'Empereur que les marques en apparence, demeurant en effect la souveraineté aux estats des sept Electeurs, de trois cens Princes ou environ, & des Ambassadeurs députés des villes Imperiales. Nous auons monstré que l'estat est Aristocratique, où la moindre partie des citoyens comman de la surplus en nom collectif, & à chacun en particulier.

if Hobbesian sovereignty is brought forward, then two possibilities appear: either that the sovereign power is jointly held by the Imperial Estates, by what could be dubbed a princely 'Leviathan,' or that sovereignty is solely, and formally, possessed by the Holy Roman Emperor though he lacks power to enforce or influence his subjects in the way that Thomas Hobbes would envision. Diachronically, Pufendorfian philosophy could be placed betwixt Bodin and Hobbes; sovereignty is seemingly shared between multiple actors, which goes against the principle of indivisibility, though it is carried out by a constitutional document, which is within von Pufendorf's reasoning. Continuing in the line of diachronic views, an Oppenheimian interpretation would likely arrive at a conclusion that the Golden Bull instituted a semi-sovereign or federal system in the Holy Roman Empire, with the justification that neither the Emperor nor the Estates could realistically exercise full sovereignty over their lands; the Emperor was conditionally restricted from intervening in Estate affairs whilst the Princes still had to follow the common law of the Empire.[66] To digress into matters of inheritance, the Golden Bull categorically establishes the following:

> [W]e, wishing by God's help to wholesomely obviate future dangers, do establish with imperial authority and decree, By the present ever-to-be-valid law, that when these same secular prince electors … shall die, the right, vote and power of thus electing shall, freely and without the contradiction of any one, devolve on his first born, legitimate, lay son…

An imperial authority is again pronounced, now for the justification of attaching the imperial voting power to the secular electoral titles. This primogenitary method[67] of safeguarding future successions overrode the previous semi-Salic system of the secular Prince-Electors. Doing so by invoking the supreme authority of the Holy Roman Empire, which for clarity's sake can be likened to the supreme power and high sovereignty of the Empire itself, carries at the very least symbolic deference to the elected monarch to whom all the Estates owed fealty.

As can be seen, Bodin claims that sovereignty has been 'deducted' from the Emperor towards the seven Electors and towards the Imperial Estates as a whole, a sign which he uses to categorise the Holy Roman Empire as aristocratic. J. Bodin, op. cit., p. 223.

[66] Unless they were exempt from certain common provisions.

[67] Succession by agnatic primogeniture, or the sole inheritance by the legitimate first-born son, became popular later in Europe. For more context on medieval and early modern inheritance in Europe, the paper 'In the name of the Father: Inheritance Systems and the Dynamics of State Capacity' (DOI: 10.1017/S1365100519000476) by Èric Roca Fernández and Chapter II in Book III of *The Wealth of Nations* by Adam Smith are highly recommended.

Concerning state absoluteness, the Golden Bull makes numerous guarantees towards the preservation of certain privileges, a prime example being that of the Electorate Kingdom of Bohemia, which is prescribed:

> Inasmuch as, through our predecessors the divine emperors and kings of the Romans, it was formerly graciously conceded and allowed to our progenitors and predecessors the illustrious kings of Bohemia … was introduced, without hindrance of contradiction or interruption, … by a laudable custom preserved unshaken by length of time … that no prince, baron, noble, knight, follower, burgher, citizen-in a word no person belonging to that kingdom and its dependencies wherever they may be, no matter what his standing, dignity, pre-eminence, or condition-might, or in all future time may, be cited, or dragged or summoned … before any tribunal beyond that kingdom itself other than that of the king of Bohemia and of the judges of his royal court…[68]

This unambiguously absolute and high-strung declaration of Bohemian legal independence, known as the privilege of non-appeal,[69] would be injudicious to classify as anything but an affirmation of Bohemian sovereign authority, which is further reinforced by the addition of the 'ever-to-be-valid decree'[70] giving both the king of Bohemia and the other Prince-Electors exclusive right of disposal of mines; similarly, further privileges were granted concerning rights of coinage[71] to the Prince-Electors. Vital to this discussion is how these listed rights are deemed privileges exclusive to the Prince-Electors, revocable only under narrow circumstances.[72] Heeding the words used in *De la Republique*, 'for the purpose of

[68] Golden Bull, op. cit., section 8 'Concerning the immunity of the king of Bohemia and his subjects.'
[69] Lat. *privilegium de non appellando*.
[70] The precise formulation is:

> We establish by this ever-to-be-valid decree, and of certain knowledge do declare that our successors the kings of Bohemia, also each and all future prince electors, ecclesiastical and secular, may justly hold and lawfully possess- with all their rights without exception, according as such things can be, or usually have been possessed-all the gold and silver mines and mines of tin, copper, lead, iron and any other kind of metal, and also of salt … and whatever our progenitors the kings of Bohemia of blessed memory, and these same prince electors and their progenitors and predecessors shall have legally possessed until now; as is known to have been observed by ancient custom, laudable and approved, and sanctioned by the lapse of a very long period of time.

Once again the decision is legitimised by longstanding tradition and continuity. Ibid., section 9 'Concerning mines of gold, silver and other specie.'
[71] The section reads:

> We decree, moreover, that our successor, the king for the time being of Bohemia, shall have the same right which our predecessors the kings of Bohemia of blessed memory are known to have had, and in the continuous peaceful possession of which they remained: the right, namely, in every place and part of their kingdom, and of the lands subject to them, and of all their dependencies- wherever the king himself may have decreed and shall please-of coining gold and silver money … [w]e will, moreover, that the present decree and favour, by virtue of this our present imperial law, be fully extended to all the elector princes, ecclesiastical as well as secular…

It is difficult to argue against this being a devolvement of what would be classified as falling under the domain of the sovereign according to either Jean Bodin, Samuel von Pufendorf, or Thomas Hobbes. Ibid., section 10 'Concerning money.'
[72] The wording, as is a common denominator for many of the sections concerning special privileges or rights granted to the Prince-Electors in the Golden Bull, lays claim to legal perpetuity:

giving them [laws] more weight and authority, adding the words: by perpetual and irrevocable edict…'[73] one may even speculate that Bodin referred partly to the Golden Bull in this instance, as these *privilegia*[74] principally empower the Electors by their sovereign command. They denote exceptions to the nominal supreme power of the Holy Roman Emperor. The last section of the Golden Bull contains the following interesting declaration,

> Inasmuch as the majesty of the holy Roman empire has to wield the laws and the government of diverse nations distinct in customs, manner of life, and in language…[75]

Bearing in mind that the modern understanding of state and nation would be inaccurate to apply here, a short digression can still be made, which will be further elaborated in Chapter 7, regarding the form of the Holy Roman Empire, since this was of great interest to both Jean Bodin and Samuel von Pufendorf; the phrasing 'laws and … government of diverse nations' could result in a line of argumentation in von Pufendorf's favour: that the constitutional form of the Holy Roman Empire was irregular and confederal; thus not conforming to the aristocratic appellation used by Jean Bodin. This is exemplified by taking into consideration the *privilegia* of the Prince-Electors, the dependent power of the Holy Roman Emperor,[76] and the reduced status of the remaining Imperial Princes and Cities. However, as will be shown later, von Pufendorf does utilise[77] the term 'Confederate System' adjoined to his application of an irregular body.

> Moreover we establish, and by this perpetual imperial edict do decree, that no privileges or charters concerning any rights, favours, immunities, customs or other things, conceded, of our own accord or otherwise, under any form of words, by us or our predecessors of blessed memory the divine emperors or kings of the Romans, or about to be conceded in future by us or our successors the Roman emperors and kings, to any persons of whatever standing, pre-eminence or dignity, or to the corporation of cities, towns, or any places: shall or may, in any way at all, derogate from the liberties, jurisdictions, rights, honours or dominions of the ecclesiastical and secular prince electors; even if in such privileges and charters of any persons, whatever their pre-eminence, dignity or standing, as has been said, or of corporations of this kind, it shall have been, or shall be in future, expressly cautioned that they shall not be revokable…

In addition to the earlier examples of eternal rulings, is it only pertinent to mention that this type of language is part of what makes the Golden Bull equivalent in effect to a constitutional document. Ibid., section 13 'Concerning the revocation of privileges.'

[73] Translated from French. Original quote is '… à fin de leur donner plus grand poids & autorité, y adioustent ces mots : par edict perpetuel et irrevocable…' J. Bodin, op. cit., p. 103.

[74] Common Latin term to denote the Estates' privileges.

[75] Golden Bull, op. cit., section 31.

[76] Since the title was elective, a large part of the Holy Roman Emperor's real power came from their existing demesne. Both Frederick I von Hohenstaufen and Charles V von Habsburg held large personal possessions before their election to the office.

[77] S. von Pufendorf, *The present State of Germany, or, An account of the extent, rise, form, wealth, strength, weaknesses and interests of that empire the prerogatives of the emperor, and the priviledges of the cleaors, princes, and free cities, adapted to the present circumstances of that nation*, available via Lund University Libraries at <https://www-proquest-com.ludwig.lub.lu.se/eebo/docview/2248533343/12100281>, p. 153, p. 9, accessed 17 May 2021.

6.2. PEACE OF WESTPHALIA

The initial text of the Treaty of Münster, which will be the main treaty representing the Peace of Westphalia, mostly settle matters of inheritance and title; instead, the first part that touches collectively upon the Imperial Estates in the Treaty reads as follows:

> And to prevent for the future any Differences arising in the Politick State, all and every one of the Electors, Princes and States of the Roman Empire, are so establish'd and confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of Territorial Right, as well Ecclesiastick, as Politick Lordships, Regales, by virtue of this present Transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence.[78]

This is a confirmation of the Estates' territorial autonomy. The state absoluteness of the Holy Roman Empire is therefore severely restricted; there is no sovereign territory of the Holy Roman Empire, but partially sovereign territories who still formally answer to its eponymous liege, borrowing from Oppenheim's classification. Since the Estates still had seats in the Imperial Diet, which is a higher legislative body than the individual princely processes, they were still bound to a greater whole. And although the balance between the Princes and the Emperor was majestically skewed in favour of the former, the fact of the matter is that this balance is only made possible by the two parties competing over the same authority: the authority to make laws, levy taxes, and conduct diplomacy; in a word, aspects of sovereign decision-making. According to synchronic or diachronic viewpoints, embodied in the Bodinist, Hobbesian, or Pufendorfian theories of sovereignty,[79] this autonomous devolvement can be seen as a fragmentation of the state's supreme authority, thus destroying the very essence of the 'absolute and perpetual power' that the sovereign possesses, whilst Oppenheimian thought would speak of this as a signifier of relative sovereignty. Because after all, the Prince-Electors, Princes, and Free Cities were still recognised as such by the laws of the Holy Roman Empire; they enjoyed rights that were dependent on the existence of Imperial law enacted and ratified under the auspices of the nominal sovereign power of the Holy Roman Emperor.

[78] Treaty of Münster, op. cit., Article LXIV.
[79] Where Hobbes and von Pufendorf are contemporary to the Peace of Westphalia.

The following article establishes a more equitable internal political process for the Estates:

> They shall enjoy without contradiction, the Right of Suffrage in all Deliberations touching the Affairs of the Empire … as also when a Peace of Alliance is to be concluded, and treated about, or the like, none of these, or the like things shall be acted for the future, without the Suffrage and Consent of the Free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire, to make Alliances with Strangers for their Preservation and Safety; provided, nevertheless, such Alliances be not against the Emperor…[80]

In continuing with the theme of the abovementioned aspects of sovereignty, it may be said that the subsequent phrase, 'shall be free perpetually … to make Alliances…' bears further elaboration. The Princes' bilateral right to negotiate and enter into alliances with other sovereign states could, with very little opposition, be said to either comprehend a *de facto* sovereign devolution or a similarly effected destruction of the supposed sovereignty of the Holy Roman Emperor. It is right that the political institution itself survived, yet its functional sovereign existence can not be continually justified in the wake of numerous concessions to the Imperial Estates. And when the matter of sovereignty is mentioned in Article LXXI, it is said that the 'Right of Sovereignty' of ceded territories be '(…) in the same manner they formerly belong'd to the Emperor…'[81] which signifies a more absolute relationship between the titles and the sovereign than what reality constituted. It can be understood as an admission of traditional sovereignty[82] for the purposes of an equitable agreement, since it was a territorial concession to the Kingdom of France and it would be impossible to transfer this 'princely sovereignty' to another type of administration. Even so, the passage stands as an example of consciousness regarding the general understanding of the phenomenon of state sovereignty.

[80] Ibid., Article LXV.
[81] The full text reads as follows:

> First, That the chief Dominion, Right of Sovereignty, and all other Rights upon the Bishopricks of Metz, Toul, and Verdun, and on the Citys of that Name and their Diocesses, particularly on Mayenvick, in the same manner they formerly belong'd to the Emperor, shall for the future appertain to the Crown of France, and shall be irrevocably incorporated therewith for ever, saving the Right of the Metropolitan, which belongs to the Archbishop of Treves.

Ibid., Article LXXI.
[82] With full state absoluteness. See Chapter 4.1.1.

As a closing remark, the form of the Peace of Westphalia necessitated a division between its contracting parties. It negotiated peace between the Holy Roman Emperor and other European powers, within and outside the borders of the Empire itself; the Thirty Years' War was as much a civil war as it was a conventional one. Whereas in the Golden Bull the Emperor and the Prince-Electors were in accord with one another, they were in open war against each other during the Thirty Years' War. It can be argued that it would seem disingenuous to promote the earlier image of an 'imperial dignity' when such vociferous and violent disagreements over religion and secular interests were open to all. Likewise, a more pragmatic outlook would consider that since these were peace treaties, it is simply more practical to isolate each belligerent by their own identification: as individual states with their own interests and grievances.

7. DISCUSSION

From the preceding presentation of the history of sovereignty within the Holy Roman Empire, it becomes apparent that a change has transpired, however little expressed by proxy of the treaties. The primary function of the Golden Bull was its codification of the Imperial Estates' rights and privileges, though it may as well be a hagiography dedicated to the seven Prince-Electors; the favourable legal treatment given to these actors colour and irreversibly define the Golden Bull, such as giving Bohemia the *privilegium de non appellando* and standardising the inheritance law of the Electors.[83] However, the importance of the 'imperial dignity' used in a parallel definition encompassing both the Holy Roman Emperor and the offices of the Electors yields an important contradistinction to the Peace of Westphalia: the idea of a supreme authority is equalised between the nominal high sovereign and the practical lesser sovereigns in the Golden Bull. 'High sovereign' in this instance refers to the Holy Roman Emperor, who juristically possessed supreme authority in the entire Empire, though this authority was generally sidelined by the 'lesser sovereigns,' the innumerable leaders of the territories that comprehended the Imperial Estates: for example, the Elector Palatine of the Rhine. This equalisation can be comparatively illustrated with these formulations:

> [T]he office by which we possess the imperial dignity, are doubly-both as emperor and by the electoral right which we enjoy…[84]

> [I]n the presence and with the consent of the Electors of the Sacred Roman Empire, the other Princes and States, to the Glory of God, and the Benefit of the Christian World, the following Articles have been agreed on and consented to, and the same run thus.[85]

The wording in the Golden Bull stresses an implicit equal standing between the Prince-Electors and the Holy Roman Emperor, whose cooperation jointly constitute an imperial sovereignty,[86] whilst this joint aspect is lost in the later treaty. It must interpretatively be said that the documents are of two wholly different natures,[87]

[83] By making their titles indivisible.
[84] Golden Bull, op. cit., para. 2, line 1.
[85] Treaty of Münster, op. cit., para. 1, lines 17-18.
[86] The 'imperial dignity' that was mentioned in Chapter 6.1.
[87] The Golden Bull was a constitutional settlement solely concerning the Estates of the Holy Roman Empire, whilst the Treaties of Osnabrück and Münster were international peace treaties.

borne from differing historical circumstances, though a progression has taken place, both in how sovereignty is perceived and understood.

Now, a discussion on the constitutional form of the Holy Roman Empire will be made, since seemingly no two significant theorists can agree on this matter. In the previous chapter, it was argued that the Holy Roman Empire bore the hallmarks of a political confederation with inseparable aristocratic elements. An aristocratic confederation is not prescribed by Aristotle in his six forms of government,[88] though seeing as previous authors have made independent alterations to this, one will also be made here: it was a nominal super-monarchy, with weak legislative and judicial power, and dominated by a cadre of secular and ecclesiastical Princes. It can not reasonably be called a pure aristocracy due to its decentralised and devolved structure, as Samuel von Pufendorf elegantly expresses:

> And from hence it is easie to collect how little is wanting to make every of the States Independant Soveraigns; for they, or at least the greatest part of them, have the intire Power of Life and Death over their respective Subjects. They can enact Laws that are contrary to the common Laws of *Germany*, in their own States. They have an intire Liberty as to Religion. They levy Taxes. They make Leagues one with another, and with Foreigners … [t]hey mint Moneys, and do all other things necessary to the Government of their People.[89]

As well as saying that 'it tends naturally to the state of a Confederate System…'[90] which is a fair judgment befitting the post-Westphalian Holy Roman Empire. However, this is not as accurate a categorisation for the Empire in the 14th century, due to vast differences in political and philosophical norms. The post-Westphalian situation formalised particular national characteristics of sovereignty by removing the older pretence of the shared 'imperial dignity' and abrogating any claim to absoluteness that the Holy Roman Emperor may have possessed.

[88] Aristotle, op. cit, pp. 2030ff.
[89] S. von Pufendorf, *The present State of Germany, or, An account of the extent, rise, form, wealth, strength, weaknesses and interests of that empire the prerogatives of the emperor, and the priviledges of the cleaors, princes, and free cities, adapted to the present circumstances of that nation*, available via Lund University Libraries at <https://www-proquest-com.ludwig.lub.lu.se/eebo/docview/2248533343/12100281>, p. 132, p. 28, accessed 17 May 2021.
[90] Ibid., p. 153, p. 9.

7.1. CONCLUSIONS

This thesis analytically discussed the meaning and evolution of the concept of sovereignty within the Holy Roman Empire between the 14th and 17th centuries, mainly drawing on conceptual-historical and comparative methods. Firstly, it sought to answer how the concept of sovereignty manifested, implicitly or explicitly, in the texts of the Golden Bull and the Peace of Westphalia. In the Golden Bull, this was carried out by the joint legitimisation of power under an 'imperial sovereignty,' which is derived from 'imperial dignity,' a term explicitly used in the Golden Bull. Further, in the Peace of Westphalia, this shared view of sovereignty was abandoned in favour of what can be classified as national sovereignty. Secondly, it aimed to identify the changes over time regarding the meaning of sovereignty, which is categorically a transfer from the universalist presuppositions expressed in the Golden Bull to the national particularism of the Peace of Westphalia. This can be explained by advances in political-philosophical thought, and its general consciousness, between these two periods; it can also be attributed to more pragmatic reasons such as the different forms and purposes of the documents.

CUIUS REGIO, EIUS POTESTAS?

8. SUGGESTIONS FOR FUTURE RESEARCH

There are a number of areas that can be diversified or expanded upon in future studies of the concept of sovereignty in the Holy Roman Empire. Firstly, it can include more varied theories of sovereignty, both historical and contemporary, to broaden the application of conceptual-historical methods. Further, it may be pertinent to gain access to original-language versions of the documents, in order to verify specific terms. Lastly, expanding the scope of the study to include one or two more constitutional documents, preferably from the 15th or 16th century, may provide some insights into the changes during the middle period between the Golden Bull and the Peace of Westphalia.

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