

Samuel Pufendorf, The Constitution of the German Empire (1667)

Abstract

Taken from a famous and influential work, these brief excerpts highlight the political divisions within the Holy Roman Empire. In assessing the constitution, or makeup, of the empire, author Samuel Pufendorf (1632-1694) displays an anti-Catholic and anti-Imperial bias but also reserves criticism for the nobility and the towns as well. He invokes “the fatherland” and urges the Empire to become more active in the area of military self-defense. He is ambiguous on the depth of the legitimacy of individual state sovereignty within the Empire.

Source

[...] Thus, there is nothing left for us to do but to call the German Empire [*Reich*], if classified according to the rules of political science, an irregular body resembling a monster. Through the negligent indulgence of the emperors, the ambitions of the princes, and the machinations of the clergy, it has developed over the course of time from a regular monarchy into such a disharmonious form of government that it is no longer merely a limited monarchy, though outward appearances would seem to indicate that; nor is it yet a federation of several states, but rather a cross between the two. This condition is the constant source of the fatal disease and the internal upheavals of the Empire, since the emperor, on the one hand, strives for the restoration of monarchical rule, and the estates, on the other, strive for complete liberty. But then it is the nature of all degeneration that a state, once it has deviated far from its original condition, quickly approaches, in rapid decline, the other extreme; whereas restoring it to its original form can only occur with great effort. One can easily push a rolling rock down a mountain, but rolling it up to the summit requires incredible pains; likewise, Germany will not be restored to the monarchical form of government without the greatest shock waves and without the total confusion of existing circumstances; it is evolving, on the other hand, toward a federation of states on its own. If one disregards the mutual ties between the emperor and the estates, it is already today a federation of allies with unequal rights, in that the estates have to give due acknowledgment and honor to the sovereignty of the emperor. The league between Rome and the Latins, before the latter were forced into a state of subservience by Rome, was one example of a union of free states; likewise, Agamemnon’s generalship in the Greek army during the Trojan War was based on a military alliance. What usually happens, however, is that the leader of a league increases his power so much that he eventually treats the weaker allies as subjects.

Thus, we can best define the state of Germany as a close approximation of a federation of several states, in which one prince, as the leader of the federation, occupies the foremost position and is shrouded in the outer appearance of royal power. In the next chapter, we will deal with the serious diseases afflicting this body. [...]

If the German Empire had a monarchical constitution, then the Empire’s greatness and strength could be a threat to all of Europe, but it is so weakened by internal diseases and upheavals that it can barely defend itself. The main cause of the evil is the disharmonious and disordered makeup of the state. A multitude of people, no matter how great, is not stronger than a single person as long as everyone follows his own course; all power derives from union. Even if the multitudes do not grow together into a natural body, the powers of the multitudes can still unite, insofar as they allow themselves to be guided by a uniform decision as if by *one* soul. The firmer and more organized the union, the stronger the

society; a loose and flawed fusion of the parts necessarily leads to weakness and disease. The most perfect union and the one best suited to endurance is a well-established monarchy. For aristocracies, apart from the fact that they can survive only in places where the essential powers of a state are concentrated in one city, are by nature frailer than monarchies. The illustrious Republic of Venice is an exception that numbers among the miracles. Confederations of states joined together by alliances among several states are connected much more loosely and fall prey to internal unrest or even dissolution far more easily. If confederations of states are to attain a certain stability nonetheless, the allied states must have the same system of government, the balance of power between them must be nearly equal, the union should provide the same benefit to all, and, finally, the association should have been formed only after careful consideration and according to well-refined principles. For states that slither into a league carelessly, spontaneously, and without having thoroughly contemplated and organized its future constitution in advance have just as little chance of forming a harmonious body as a tailor has of making a fashionable piece of clothing if he cuts the cloth to size before deciding whether it is for a man or a woman. It has long been observed that monarchies and free states rarely enter into leagues with one another in good faith even briefly, let alone for a long time; for the princes detest popular liberty and the people fear the princes' pride. Indeed, human nature is so corrupted that hardly any stronger party can calmly consider the weaker an equal. And whoever is left with no part, or very little part, of the common profit will refuse to shoulder the common burden.

Germany is so weak because two evils converge in it: a poorly organized monarchy and, at the same time, a disordered confederation of states; the main evil is that neither form of government fits Germany. The outer appearance and empty forms point to a monarchy. In the early days, the king actually was what his title suggested. But after his influence had declined and the power and liberty of the estates had increased, barely a trace of the monarchical power remained, which can be observed in the leaders of a confederation of states. Thus, the imperial body is rocked by a destructive tug-of-war between the interests of the emperor and those of the estates: the former strives with every means toward the restoration of the old regal powers, whereas the latter steadfastly defend the power they have gained. The consequences are constant suspicion, mistrust, and hidden intrigues to prevent any increase in imperial power or to break estates-based power. Furthermore, the otherwise powerful Empire is incapable of attack and conquest because new acquisitions can neither be conceded to the emperor by the estates nor distributed evenly to all. This alone is monstrous: that head and limbs confront each other like two distinct entities.

Furthermore, for a variety of reasons, there are manifold differences between the estates, and these prevent Germany from appearing even as an ordered confederation of states. The estates have diverse forms of government that are difficult to reconcile; free states mix with monarchies. The affluence of cities that have grown rich through trade arouses the princes' envy, especially since this wealth has partially flowed into the cities from their territories, and since there is no denying that some cities, like parasites, have grown large by draining the surrounding principalities of their resources. The nobles despise the burghers who are often no less proud of their money than the nobles are of their forebears or impoverished estates. Some princes consider the cities a reproach, as it were, against their rule, and they find that their subjects endure their status more reluctantly because of the example of neighboring liberty. Thus, envy, contempt, suspicion, and hidden intrigues arise everywhere. This prevails even more intensely and obviously between the bishops and those cities where their cathedrals are located. Even at the Imperial Diet, the princes display their aversion toward the college of cities; the emperor, by contrast, is well disposed toward the cities because he has greater influence on them than on the other estates.

However, the ecclesiastical and secular princes are not well disposed toward each other either. Among the princely class, the clergy ranks higher on account of the sanctity of their office, and because undoubtedly God's spirit pours more richly onto bald heads than unshorn ones. For that reason, during the barbarian Middle Ages the clergy enjoyed the highest standing in the state. To the secular princes,

though, it is vexing to have to see how suddenly the clergymen, usually coming from the lower nobility, receive equal or higher offices, and how they invoke the grace of God, especially since they are not able to pass their offices on and their families will remain in their previous stations. However, many bishops, following the example set by the Holy Father, also provide generously for their relatives by means of ecclesiastical benefices and donations. On the other hand, ecclesiastical princes also have legitimate reasons to be angry with secular ones because the latter force them to tighten their paunches; more on this topic below.

The great inequality of power among the estates also makes considerable contributions to their division. For due to a hereditary defect of the human race, the stronger despise the weak, wishing to subjugate them, whereas the latter have a tendency toward suspicion and complaints, sometimes brusquely emphasizing the equality of their estates-based liberty. The precedence of the electors, too, is a serious cause of conflict, since the princes acknowledge their standing only reluctantly, some of them charging the former with the unlawful appropriation of their office, while the latter eagerly fight for their rights and standing.

As if diseases were not enough, religion, otherwise the strongest bond between minds, has torn Germany into factions and immersed it in violent conflicts. The reasons for this lie not only in the hatred caused by differences in religious opinion and by the clergymen's habit of excluding followers of a different faith from heaven, but also in the fact that Protestants have expelled Catholic clergymen from the majority of their estates. The latter are striving day and night to win them back, while the former consider it cowardice to give up property once it has been acquired. Besides, in the opinion of many people, the excessive power of the clergy is generally dangerous to the state, especially when priests and monks are dependent on a non-German head that never feels genuine affection for the Germans and would gladly see all lay persons doomed, provided that his entourage lived in splendid circumstances. It is obvious that this creates a special state within the state, and the state thus has two heads. Most people who love their fatherland more than the Roman church consider this the worst thing that can happen to the polity.

No less harmful is the authority of the German estates to enter into alliances not only among themselves but also with foreign powers; and this is occurring even more casually because the estates were expressly granted this right in the Peace of Osnabrück [i.e., the Peace of Westphalia]. As a result, the German princes are divided into factions, and the allied foreign powers get the chance to keep Germany in check at will, and, if a favorable opportunity presents itself, to extend their power with the help of their allies at the expense of the whole. For one seeks such alliances with foreign powers not only against other countries (that might be tolerable) but also against members of the Empire.

However, there is hardly any trace of the goddess of justice left in Germany either. To be precise, when a dispute among estates – and such occur frequently because of the great number of estates and the hodge-podge nature of their territories – is brought before the Chamber Court [*Kammergericht*], one can expect to see the end of the controversy only a century later. With respect to the Imperial Court Council [*Hofrat*], one fears that it does not shut itself off sufficiently from favors and bribery, and some suspect the court of being swayed too much by its seat at the imperial court. Therefore, in Germany, one's rights are usually asserted by force of arms; those who have the power also decide the litigation in their favor, not shrinking from proceeding to enforcement either.

Finally, the weakness of the imperial association is also shown by the fact that there is neither a common imperial treasure nor an imperial army that one could use to repulse attacks from abroad or to acquire a province, with whose taxes one could finance common public expenditures. It would even be enough if Germany could use its mercenaries, who risk their necks nearly everywhere in Europe, for its own benefit. [...]

Source of original Latin text: Severinus de Monzambano Veronensis, *De statu imperii Germanici ad Laelium fratrem, dominum Trezolani. Liber unus*. Geneva, 1667.

Source of German translation: Samuel Pufendorf, *Die Verfassung des deutschen Reiches*. Translation from Latin, annotations, and epilogue by Horst Denzer. Stuttgart: P. Reclam, 1976, p. 106 f., 118–22; also reprinted in Helmut Neuhaus, ed., *Zeitalter des Absolutismus 1648–1789*. Deutsche Geschichte in Quellen und Darstellung, edited by Rainer A. Müller, volume 5. Stuttgart: P. Reclam, 1997, pp. 27–35.

Translation: Erwin Fink

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