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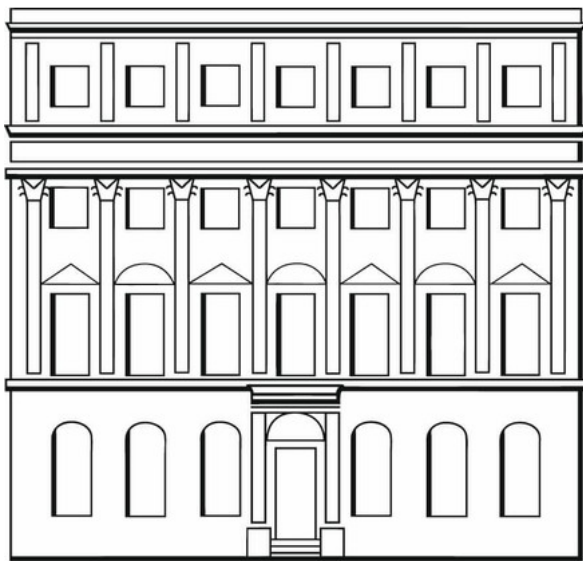
The Permanent Imperial Diet in European Context, 1663-1806

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The Permanent Imperial Diet in European Context, 1663–1806

KARL HÄRTER

This essay summarizes recent research on the permanent imperial diet, in order to provide a (more or less) new perspective on this pivotal imperial institution and to place it within a European context.¹ It will try to demonstrate that the diet was not only embedded in European politics and in a European network (neither at the centre nor at the periphery), but is also comparable in many respects to the fundamental structures and developments to be found in other early modern state or representative assemblies, parliaments, and diets in Europe, for instance, in Sweden, England, the Netherlands, the Swiss Confederation, and Poland.² I am fully aware of the dangers of comparing apples with oranges and describing the diet as a success story. Despite the new picture of the Old Reich drawn by the vast majority of historians in recent years,³ however, one still finds studies that retell the old (Prussian) story of

¹ Where not otherwise indicated, the following is based on Walter Fürnrohr, 'Der Immerwährende Reichstag zu Regensburg: Das Parlament des Alten Reiches', *Verhandlungen des Historischen Vereins für Oberrhein und Regensburg*, 104 (1963), 165–252; Anton Schindling, *Die Anfänge des Immerwährenden Reichstags zu Regensburg: Ständevertretung und Staatskunst nach dem Westfälischen Frieden* (Mainz, 1991); Karl Härter, *Reichstag und Revolution 1789–1806: Die Auseinandersetzung des Immerwährenden Reichstags zu Regensburg mit den Auswirkungen der Französischen Revolution auf das Alte Reich* (Göttingen, 1992).

² For an overview of the subject and of recent research on early modern state assemblies, parliaments, and diets, see Alex Reginald Myers, *Parliaments and Estates in Europe to 1789* (London, 1975); Michael A. R. Graves, *The Parliaments of Early Modern Europe* (Harlow, 2001); Dietrich Gerhard (ed.), *Ständische Vertretungen in Europa im 17. und 18. Jahrhundert* (Göttingen, 1969); Karl Bosl (ed.), *Der moderne Parlamentarismus und seine Grundlagen in der ständischen Repräsentation* (Berlin, 1977); R. J. W. Evans and Trevor V. Thomas (eds.), *Crown, Church and Estates: Central European Politics in the Sixteenth and Seventeenth Centuries* (Basingstoke, 1991); Peter Blickle (ed.), *Landschaften und Landstände in Oberschwaben: Bäuerliche und bürgerliche Repräsentation im Rahmen des frühen europäischen Parlamentarismus* (Tübingen, 2000).

³ Karl Otmar Freiherr von Aretin, *Das Alte Reich 1648–1806*, 4 vols. (Stuttgart, 1993–2000); Georg Schmidt, *Geschichte des Alten Reiches: Staat und Nation in der Frühen Neuzeit 1495–1806* (Munich, 1999); Peter Claus Hartmann, *Das Heilige Römische Reich deutscher Nation in der Neuzeit 1486–1806* (Ditzingen, 2005); Barbara Stollberg-Rilinger, *Das Heilige Römische Reich Deutscher Nation: Vom Ende des Mittelalters bis 1806* (Munich, 2006).

decline and a 'rotten' permanent diet abused by the powerless Estates of the Empire and obstructed by incompetent deputies and ministers. In this respect, the diet continues to be judged by the benchmark of the fiscal-military, powerful state, or contrasted with the positive example of the English Parliament. To this extent, it is portrayed as paradigmatic of the general decline of state assemblies, parliaments, and diets in Europe in the seventeenth and eighteenth centuries that accompanied the rise of the absolutist state.

As is well known, the model of the absolutist state is contested,⁴ and as a consequence it is almost impossible to describe the complex development of state assemblies, parliaments, and diets in early modern Europe from the perspective of the absolutist monarch busy abolishing or totally dominating 'his' (or 'her') assembly, all the more so as recent accounts and research provide us with new criteria and viewpoints concerning the role of early modern assemblies. They point us in new directions that emphasize their essential structures and functions and the crucial role that procedure, communication, negotiation, and mediation played in such bodies.⁵ From this perspective it is legitimate and possible to compare the permanent imperial diet with other early modern assemblies or parliaments, despite the fundamental differences between the individual institutions and the underlying political and constitutional structures, for, as has often been stressed, the 'monstrous' constitution of the Holy Roman Empire was more or less unique in Europe.⁶

From a European point of view, the establishment of a permanent imperial diet of the Holy Roman Empire in 1663 can be located within more general trends in the development of state assemblies between the second half of the seventeenth and the end of the eighteenth century. The mid-century conflicts and crises associated with a new level of state-building altered the shape of the Estates and other representative assemblies in Europe: a few

⁴ Ronald G. Asch and Heinz Duchhardt (eds.), *Der Absolutismus—ein Mythos? Strukturwandel monarchischer Herrschaft* (Cologne, 1996).

⁵ John Rogister, 'Some New Directions in the Historiography of State Assemblies and Parliaments in Early Modern and Late Modern Europe', *Parliaments, Estates and Representation*, 16 (1996), 1–16; Maximilian Lanzinner and Arno Strohmeyer (eds.), *Der Reichstag 1486–1613: Kommunikation—Wahrnehmung—Öffentlichkeiten* (Göttingen, 2006).

⁶ Johannes Burkhardt, 'Europäischer Nachzügler oder institutioneller Vorreiter? Plädoyer für einen neuen Entwicklungsdiskurs zur konstruktiven Doppelstaatlichkeit des frühmodernen Reiches', in Matthias Schnettger (ed.), *Imperium Romanum—Irregulare Corpus—Teutscher Reichs-Staat* (Mainz, 2002), 297–316.

(France and Spain) were eliminated or suspended by the monarch; some triumphed over the ruler (England and the Netherlands); and others developed new arrangements and new forms of negotiating with the ruler, emperor, or governor, often characterized by periodicity or even permanency in the form of permanent session.⁷ To develop or achieve a permanent institution took many years, however. Frequently, assemblies could maintain permanent sessions only for a limited period, or were convened only periodically, for example, annually or every few years. Only the English (later British) Parliaments (of 1689, 1694, and 1717),⁸ and the imperial diet beginning in 1663 managed to perpetuate their sessions, and developed into permanently active institutions with a (more or less) permanent staff, bureaucratic structures, and location.

There are a number of reasons why the imperial diet evolved into a permanent assembly over a period of twenty years. They date back to the unresolved issues of the Peace of Westphalia and the diet of 1654–5, but were also a response to structural needs. The complex imperial system required a permanent institutional platform to ensure political communication and balance.⁹ In comparison to the development of other state assemblies in Europe since the second half of the seventeenth century, the permanent imperial diet acquired considerable significance with respect to such criteria as participation, representation, organization, competences, business conducted, procedures, communication, negotiation, and the creation of a public sphere and a living constitution. In regard to these criteria and its crucial function in the imperial system, the permanent imperial diet was comparable to the assemblies and diets of other 'federally' organized or 'composite' states, for instance, the *Tagsatzung* of the Swiss Confederation, the States General in the Netherlands, or, even, to a certain extent, the English Parliament.¹⁰

⁷ See Graves, *Parliaments*, 114–51; H. G. Koenigsberger, 'Parliaments in the Sixteenth Century and Beyond', in Richard W. Davis (ed.), *The Origins of Modern Freedom in the West* (Stanford, Calif., 1995), 269–311.

⁸ Gerhard A. Ritter, 'Das britische Parlament im 18. Jahrhundert', in Gerhard (ed.), *Vertretungen*, 398–425; Christoph Kampmann, 'Der Immerwährende Reichstag als erstes stehendes Parlament? Aktuelle Forschungsfragen und ein deutsch-englischer Vergleich', *Geschichte in Wissenschaft und Unterricht*, 55 (2004), 646–62.

⁹ Schindling, *Anfänge des Immerwährenden Reichstags*; id., 'The Development of the Eternal Diet in Regensburg', *Journal of Modern History*, 58 (1986), Supplement (Politics and Society in the Holy Roman Empire 1500–1806), 64–75.

¹⁰ Thomas Fröschl, 'Federal Structures, Single-Chamber Systems, and Bicameralism

Participation and Representation

Every Estate of the Empire had the privilege of participating in the diet; all other members of the Empire such as the Imperial Knights were excluded. The *Reichsstandschaft*—‘seat and vote’ in the diet—was based on traditional law (*Reichsherkommen*) and territorial rulership over an immediate territory (*Landesherrschaft*), which is not to be confused with sovereignty. Since the sixteenth century the various types of imperial Estates permitted to attend the diet had been more or less fixed and organized in three *corpora* or colleges that met separately: the college of electors with seven to ten prince-electors; the college of princes with about one hundred princely votes, six of them collective votes (*curia* votes) representing more than one hundred counts, earls, prelates, and abbots; and the college of imperial cities with some fifty members. Thus the diet comprised a rich variety of imperial Estates: the higher clergy, from archbishops to the abbesses; the higher and lesser nobility from kings and electoral princes to small squires; ecclesiastical and secular, Catholic and Protestant (and even ‘mixed’); and larger and smaller territories and cities (some of them mere towns with no more than 1,000 inhabitants).¹¹

After 1648 or 1663, as the case may be, participation in the permanent diet was no longer a privilege of nobility but pertained to the territory or the principality. In the case of dynasties, this meant that they or the emperor could not create additional seats and votes by dividing their territories and bequeathing the parts. After 1663 the emperor’s authority to constitute new seats and votes depended on the consent of the diet, or rather, of the colleges of electors and princes. Thus the Habsburg emperors, particularly Leopold I (r. 1658–1705), could grant only a few new seats and votes in the diet. It was possible, however, to accumulate seats and votes in the college of princes by inheriting or even buying an immediate territory, or receiving it from the Reich as a result

in the Eighteenth Century: The United States of America, the Holy Roman Empire, the Helvetic Confederation, and the United Provinces of the Netherlands in Comparative Perspective’, in H. W. Blom, W. P. Blockmans, and H. de Schepper (eds.), *Bicameralisme: Tweekamerstelsel vroeger en nu* (The Hague, 1992), 87–99.

¹¹ Härter, *Reichstag und Revolution*, 36–44; Axel Gotthard, *Säulen des Reiches: Die Kurfürsten im frühneuzeitlichen Reichsverband* (Husum, 1999); Kristina Winzen, *Handwerk—Städte—Reich: Die städtische Kurie des Immerwährenden Reichstags und die Anfänge der Reichshandwerksordnung* (Stuttgart, 2002).

of secularization. In the eighteenth century each elector and the emperor himself commanded some votes in the college of princes, and several princes also held multiple votes. On the other hand, in the case of the ecclesiastical states, the actual holders of the 'seat and vote' changed every time a new bishop was elected. This not only provided noble families with new seats and votes (or influence over them), but could also slightly alter the diet's politics and networks.

Despite a distinctive hierarchy, every member of the diet could participate and dispose of their 'seat and vote' equally; the 'free and unimpeded vote' was a genuine component of what was known as German freedom (*teutsche Freiheit*). It was mainly the ruler of the immediate territory who decided how to exercise the vote and instructed his deputy or minister in the diet. In some territories, however, strong chapters or Estates were able to influence their ruler's vote and, in the case of the imperial cities and the minor Estates, the more powerful Estates or the emperor often influenced voting. Only a few imperial Estates (especially foreign ones such as Besançon, Savoy, and Malmedy) permanently refrained from exercising their vote and failed to accredit a deputy, or even abandoned their 'seat and vote' altogether, but in the long run there was no significant permanent absenteeism among the important imperial Estates after 1663.

As a consequence, the peculiar structure of the *Reichsstandschaft* and the federal construction of the permanent imperial diet implied a strong European embeddedness. Some European rulers acquired the *Reichsstandschaft*, that is, an immediate territory, and to that extent a 'seat and vote' in the diet: Sweden (Hither Pomerania and Verden), Denmark (Holstein and Oldenburg), the Habsburg Netherlands, Savoy, Chur, Trent, Brixen, Nomeney, and so on. Furthermore, with the Treaty of Westphalia (1648), Sweden and France acquired the role of guarantors of the imperial constitution and thus maintained permanent delegations at Regensburg with more or less influence (but without the right to vote in the diet).¹² After the Peace of Teschen (1779), Russia, too, claimed to be a guarantor of the imperial constitution and dele-

¹² Heinz Duchhardt, 'Das Reich in der Mitte des Staatensystems: Zum Verhältnis von innerer Verfassung und internationaler Funktion in den Wandlungen des 17. und 18. Jahrhunderts', in Peter Krüger (ed.), *Das europäische Staatensystem im Wandel: Strukturelle Bedingungen und bewegende Kräfte seit der Frühen Neuzeit* (Munich, 1996), 1-9.

gated a diplomat to Regensburg, though he was not accepted as an ambassador of a guarantor power.¹³ Conversely, some imperial Estates or their rulers achieved a rulership in other European states that did not belong to the Empire: the elector of Brandenburg in Prussia, the elector of Brunswick-Lüneburg in England (1714), the elector of Saxony in Poland (1697–1763), the prince of Nassau-Orange as stadtholder in the Netherlands, not to mention the Habsburg emperor. One would be hard put to find another assembly, parliament, or diet in early modern Europe with such a widespread European composition. In this regard, the permanent imperial diet, as a consequence of the strong embedding of the Empire in the international system of the European states between 1648 and 1806, was a part or even the centre of a Europe-wide network.¹⁴

A comparison of the composition and organization of the permanent diet with those of other assemblies reveals a greater variety of different members, especially as regards the three confessions, the broad range of ecclesiastical territories, and the fifty imperial cities (many of them small towns). But many early modern assemblies were heterogeneous and comprised different Estates, organized in separate colleges, often with considerable changes—both quantitative and qualitative—of membership, which frequently convened only from time to time.¹⁵ On the

¹³ Karl Otmar Freiherr von Aretin, 'Russia as a Guarantor Power of the Imperial Constitution under Catherine II', *Journal of Modern History*, 58 (1986), Supplement, 141–60; Karl Härter, 'Möglichkeiten und Grenzen der Reichspolitik Rußlands als Garantmacht des Teschener Friedens (1778–1803)', in Claus Scharf (ed.), *Katharina II., Rußland und Europa: Beiträge zur internationalen Forschung* (Mainz, 2001), 133–81.

¹⁴ Karl Otmar Freiherr von Aretin, *Das Reich: Friedensgarantie und europäisches Gleichgewicht 1648–1806* (Stuttgart, 1986), 55–75; Heinz Duchhardt, *Altes Reich und europäische Staatenwelt 1648–1806* (Munich, 1990).

¹⁵ Graves, *Parliaments*, 159–86; Peter Aronsson, 'Der Schwedische Reichstag als vor-modernes Parlament: Zur Repräsentation von Bürgern und Bauern', in Blickle (ed.), *Landschaften und Landstände*, 267–80; Hans Roos, 'Ständewesen und parlamentarische Verfassung in Polen (1505–1772)', in Gerhard (ed.), *Vertretungen*, 310–67; Samuel Fiszman (ed.), *Constitution and Reform in Eighteenth-Century Poland: The Constitution of 3 May 1791* (Bloomington, Ind., 1997); Beat Kümin, 'Die Commons und das House of Commons', in Blickle (ed.), *Landschaften und Landstände*, 281–94, esp. 287–8; Michael F. Metcalf (ed.), *The Riksdag: A History of the Swedish Parliament* (New York, 1987); Nils Stjernquist (ed.), *The Swedish Riksdag in an International Perspective: Report from the Stockholm Symposium* (Stockholm, 1989); I. A. A. Thompson, *Crown and Cortes: Government, Institutions and Representation in Early-Modern Castile* (Aldershot, 1993); Pedro Cardim, 'Städte, Dörfer und Ämter in den Cortes von Portugal und Kastilien in der Frühen Neuzeit', in Blickle (ed.), *Landschaften und Landstände*, 295–313; José Manuel de Bernardo Ares, 'The Aristocratic Assemblies under the Spanish Monarchy (1680–1700)', *Parliaments, Estates and Representation*, 21 (2001), 125–43.

whole, and in comparison with many other assemblies in Europe after 1663, the membership of the permanent diet remained stable, which ensured an element of continuity and fostered the practice of holding seats and exercising votes via deputies (*Reichstagsgesandte*). Like the States General or the *Tagsatzung* of the Swiss Confederation, the imperial diet developed into a congress of deputies with an imperative mandate.¹⁶ 'Seat and vote' and representation based on an immediate territory (and not noble privilege), permanency, and representation by deputies created a peculiar, perhaps more modern type of assembly or parliament. Not a democratic one, to be sure, but one partially comparable to other federally organized assemblies such as the States General, the *Tagsatzung*, and, perhaps, at least with regard to the House of Lords, the English Parliament.¹⁷

Diplomats, Deputies, Envoys, and Ministers

It was a logical consequence of the federal structure and the permanent sessions of the diet that the Estates—and foreign rulers—no longer attended the diet personally, but were represented there by deputies, envoys, ministers, ambassadors, diplomats, residents, or agents, often accompanied by clerks and forming their own delegations. Although they had only an imperative mandate and were bound by their instructions, we should not dismiss them as mere mouthpieces of their rulers. Some were nobles themselves, but often also skilled diplomats and specialists who had studied the law and sometimes represented more than one Estate or client. Many were able to achieve a role as imperial politicians in the diet's political sphere: representing and informing their clients, maintaining intensive correspondences with their departments (sometimes with the ruler in person), negotiating with other diplomats, securing numerous connections, building networks, gaining patronage, and acquiring information, but also taking action, extending their scope, trying to influence the political plans of

¹⁶ S. J. Fockema Andreae and H. Hardenberg (eds.), *500 jaren Staten-Generaal in de Nederlanden: Van statenvergadering tot volksvertegenwoordiging* (Assen, 1964); Andreas Würgler, 'Die Tagsatzung der Eidgenossen: Spontane Formen politischer Repräsentation im Spätmittelalter und in der frühen Neuzeit', in Blickle (ed.), *Landschaften und Landstände*, 99–117.

¹⁷ Clyde Jones (ed.), *A Pillar of the Constitution: The House of Lords in British Politics, 1640–1784* (London, 1989).

their Estates, and sometimes adopting a policy oriented towards the general interests of the Empire. Some of them published works dealing with issues of the imperial constitution and thus contributed to the body of topical writing on the Empire (Reichspublizistik) which was created by authors, known as *Reichspublizisten*, who also often worked temporarily in Regensburg. One of the main features characterizing the envoys to the imperial diet was their legalistic orientation: imperial tradition and law (Reichsherkommen, Reichsrecht), legal arguments and considerations, formalities, ceremony, the preservation of tradition and status, but also the resolution of conflicts by legal means made up the 'small world' of the diet's personnel.¹⁸

Furthermore, many European states maintained more or less permanent envoys or delegations at Regensburg. These included Sweden and Denmark as members of the diet, plus France, England, the Netherlands, and Russia.¹⁹ Their main tasks were to gather information, cultivate contacts, maintain networks and alliances, represent the interests of their states, influence other diplomats, and sometimes distribute pamphlets and propaganda. Despite many frustrations and complaints about other diplomats, conflicts, and the overly ceremonious nature of the diet, they contributed to the evolution of a political network at Regensburg—with European ties—and, in certain situations (for instance, the *Reichsdeputationshauptschluß*, the principal recess of the imperial deputations), they could achieve considerable influence. All in all, the entire personnel of the diet—the deputies, clerks, foreign envoys, writers, and so on—constituted (in part) a professionalized elite of the Old Reich that helped to shape the Empire as a system of

¹⁸ Walter Fürnrohr, *Kurbayerns Gesandte auf dem Immerwährenden Reichstag: Zur bayerischen Außenpolitik 1663 bis 1806* (Göttingen, 1971); Härter, *Reichstag und Revolution*, 57–9 and *passim*; id., 'Das Kurmainzer Reichstagsdirektorium: Eine zentrale reichspolitische Schaltstelle des Reichserzkanzlers im Reichssystem', in Peter Claus Hartmann (ed.), *Der Mainzer Kurfürst als Reichserzkanzler: Funktionen, Aktivitäten, Ansprüche und Bedeutung des zweiten Mannes im alten Reich* (Stuttgart, 1997), 171–203.

¹⁹ Karl Heinz Gölter, 'Sir George Etherege und Hugh Hughes als englische Gesandte am Reichstag', in Dieter Albrecht (ed.), *Regensburg—Stadt der Reichstage: Vortragsreihe der Universität Regensburg* (Regensburg 1980), 107–29; Jörg Ulbert, 'Der Reichstag im Spiegel französischer Gesandtenberichte (1715–1723)', in Olaf Asbach, Klaus Malettke, and Sven Externbrink (eds.), *Altes Reich, Frankreich und Europa: Politische, philosophische und historische Aspekte des französischen Deutschlandbildes im 17. und 18. Jahrhundert* (Berlin, 2001), 145–69; Nikolaus Leiherr, *Die rechtliche Stellung der auswärtigen Gesandten beim Immerwährenden Reichstag zu Regensburg: Eine rechtshistorische Untersuchung unter Auswertung der Schriften zum Ius Publicum des Alten Reiches* (Aachen, 2003).

communication as well as a legal system deeply embedded in the European international system and international public law.

The Emperor and the Permanent Imperial Diet

Many studies characterize early modern assemblies as opponents or rivals of the ruler, even as institutions of resistance, and the relations between monarchies and parliaments are often depicted as 'the story of a struggle for power'.²⁰ This may be true in certain cases and at certain times, but this dichotomizing model is inadequate, especially in regard to the permanent imperial diet. The emperor was an essential, integral part of the diet with formal and informal influence. Represented by two commissioners, known as the *Prinzipalkommissar* and the *Konkommissar*, he also possessed a 'seat and vote' in the college of electors (since the readmission of the Bohemian seat in 1701) and the college of princes in association with the alternating directorship of the college.²¹

Despite powerful Habsburg domestic interests and concerns, the emperor was not absolutely coterminous with the ruler of the Habsburg territories. When it came to imperial politics, the 'emperorship' could be characterized as a peculiar office with institutions such as the Imperial Chancery (*Reichskanzlei*), the imperial vice chancellor (*Reichsvizekanzler*), the Imperial Aulic Council (*Reichshofrat*), the two imperial commissioners at Regensburg, and the envoys to the imperial circles. They implemented and influenced the emperor's imperial policies, which were not completely identical to domestic Habsburg policies, and sometimes resulted in slightly different opinions or even conflicts with the main ministerial department of the Habsburg state, the *Staatskanzlei*. Regensburg was an important location and a stage on which the emperor could pursue, look after, represent, display,

²⁰ H. G. Koenigsberger, 'Dominium regale or dominium politicum et regale? Monarchies and Parliaments in Early Modern Europe', in Karl Bosl (ed.), *Der moderne Parlamentarismus und seine Grundlagen in der ständischen Repräsentation* (Berlin, 1977), 43–68, at 47.

²¹ Walter Fürnrohr, 'Die Vertreter des habsburgischen Kaisertums auf dem Immerwährenden Reichstag', *Verhandlungen des Historischen Vereins für Oberpfalz und Regensburg*, 123 (1983), 71–139 and 124 (1984), 99–148; Max Piendl, 'Prinzipalkommissariat und Prinzipalkommissare am Immerwährenden Reichstag', in Albrecht (ed.), *Regensburg*, 131–49; Volker Press, 'Die kaiserliche Stellung im Reich zwischen 1648 und 1740: Versuch einer Neubewertung', in id., *Das Alte Reich: Ausgewählte Aufsätze*, ed. Johannes Kunisch (Berlin, 1997), 189–222.

and legitimize his imperial policies as well as domestic Habsburg interests. Here the emperor and his office, the Reichskanzlei, could influence the large group of minor and medium-sized Estates and organize the emperor's party or faction: the imperial cities, the ecclesiastical and Catholic Estates, and many princes as well. This was not a stable, formal influence that gave the emperor a kind of permanent domination over the diet, but he had ample opportunity to implement imperial policy, for instance, by influencing the 'emperor's men' or the votes of 'his' Estates.

Bargaining, negotiating, exerting influence, displays of policies and interests, building and organizing networks, clientele systems, and patronage characterize the complex relationship between ruler and Estates or power elites in many early modern European assemblies. This is also true of those assemblies that had overpowered the ruler, such as the States General or even the English Parliament, if we take into account the king's veto, his influence in the House of Lords, or in foreign policy.²² Recent research has overcome the dichotomous model of ruler versus parliament—the dualist *Ständestaat*—that, particularly in the case of the permanent imperial diet, cannot adequately define the complex relationship and interaction between ruler and elites that characterized the structure and development of early modern assemblies.²³ With regard to the role and influence of the emperor in the Old Reich, we can no longer depict the diet as institutionalized opposition. Rather, it should be seen as a complex system with differing spheres of influence and changing networks, factions, and parties, where the emperor could interpose his authority and influence in many ways.

Business Conducted, Decisions, and Decision-Making

The permanent imperial diet acquired a broad range of competences and activities in matters of imperial business and politics:

²² Neithard Bulst, 'Rulers, Representative Institutions, and their Members as Power Elites: Rivals or Partners?', in Wolfgang Reinhard (ed.), *Power Elites and State Building* (Oxford, 1996), 41–58; Jones (ed.), *Pillar of the Constitution*; Roland Kleinhenz, *Königtum und parlamentarische Vertrauensfrage in England 1689–1841* (Berlin, 1990).

²³ Cf. e.g. the ground-breaking exemplary studies on France and England by J. Russell Major, *From Renaissance Monarchy to Absolute Monarchy: French Kings, Nobles and Estates* (Baltimore, 1994); and Ronald G. Asch, *Der Hof Karls I. von England: Politik, Provinz und Patronage, 1625–1640* (Cologne, 1993).

law-making, international policy and decisions on war and peace, public security, economic policy, the supervision of other institutions of the imperial constitution (the imperial higher courts, the imperial generals, and the imperial army), and judicial functions as a high court, to mention only the most important ones. In comparison to many other assemblies (except the Swiss *Tagsatzung*), taxes played only a minor role, since, with the exception of the *Kammerzieler*, a levy for the maintenance of the Imperial Chamber Court, and the war taxes (*Römermonate*), the emperor did not succeed in instituting enduring imperial taxation. In addition, barring a few special rights (*Reservatsrechte*), the emperor could not act in matters regarding the Empire without the consent of the diet. On the other hand, the diet could not hold sessions or make decisions without the emperor or his representatives (*Reichsvikare*) in the case of an interregnum. Furthermore, territorial rulership limited the scope of the diet's decisions and laws. This is not to say that imperial law was not a prime legal source or that a decision was not legally binding on all members of the Empire. The imperial Estates had, however, enhanced and intensified their territorial rule, exercising almost every function of the early modern state, jealously ensuring that the Empire did not interfere in their internal affairs. As a consequence, they used their free 'seat and vote' to influence or even obstruct decisions and imperial laws that could influence their territorial rule. Nonetheless, almost every Estate, with the exception of the few truly powerful ones, relied on the Empire, its constitution, and institutions to provide a legal framework, limited unity, a network, and security.²⁴

To maintain the fragile balance between the imperial system and territorial rule, between smaller and more powerful, Catholic and Protestant members, decision-making at the diet had to be a

²⁴ Heinz Duchhardt, 'Gesetzgebung im Alten Reich: Ein Dreischichtenmodell', in Serge Dauchy, Jos Monballyu, and Alain Wijffels (eds.), *Auctoritates: Xenia R. C. van Caenegem oblata (De auteurs van de Rechtsontwikkeling)* (Brussels, 1997), 112–17; Heinz Mohnhaupt, 'Gesetzgebung des Reichs und Recht im Reich vom 16. bis 18. Jahrhundert', in Barbara Dölemeyer and Diethelm Klippel (eds.), *Gesetz und Gesetzgebung im Europa der Frühen Neuzeit* (Berlin, 1998), 83–108; Arno Buschmann, 'Kaiser, Reich und Landesherren: Reichsrecht und Landesherrschaft im Heiligen Römischen Reich', in Dietrich Murswiek, Ulrich Storost, and Heinrich A. Wolff (eds.), *Staat—Souveränität—Verfassung: Festschrift für Helmut Quaritsch zum 70. Geburtstag* (Berlin, 2000), 449–74; Karl Härter, 'Das Recht des Alten Reiches: Reichsherkommen, Reichsgesetzgebung und "gute Policey"', in Stephan Wendehorst and Siegrid Westphal (eds.), *Lesebuch Altes Reich* (Munich, 2006), 87–94.

complex, often lengthy procedure, even if it failed to produce results. The common means of initiating proceedings was a proposition by the emperor, but apart from the director of the diet, the archbishop of Mainz in his capacity as imperial arch-chancellor (*Reichserzkanzler*), other Estates and even private individuals could also make a submission or apply to the diet. In addition, the directors of the diet and the colleges had the authority to place any subject on the agenda. Although this was a more unusual method, the Estates could use it as a bargaining chip to force the emperor to propose a subject or initiate a new law. On the whole, almost every formal deliberation was agreed upon with the major Estates and the emperor. Before formal voting began, the envoys to the diet had to call for instructions and votes and statements were often arranged, consented to, or fine-tuned among the Estates, the emperor's party, various factions and networks, and also the envoys themselves.

Thus aside from formal deliberations and law-making, many informal proceedings and negotiations took place in or around the diet (sometimes in the back rooms), which were frequently more important than the formal sessions. Formal procedure (voting) took place separately in every college, where the members could state their vote by reading, explaining, or giving reasons. This meant that voting was not restricted to brief statements based on written instructions that the envoys had only to read out, but also comprised the announcing of substantial explanations and reasons with regard to political positions. After the majority of the Estates (or at least the important ones) had voted, the directors of the college had to form a conclusion and draw up a text, the resolution, based on the dominant opinion. With the exception of religious matters, majority voting was the usual method, but voting and decision-making entailed more than just counting votes. The directors of the college, important Estates, the emperor, and skilled deputies had subtle means of influencing the final resolution, combining and fine-tuning votes, negotiating the wording, and so on. We should not forget that voting was an opportunity or a stage for the presentation and legitimization of opinions and decisions, or even for staking claims: votes, decisions, protocols, and records were distributed among the deputies and Estates, and in the eighteenth century they were printed in a number of journals and annotated in many volumes of topical writing on the Empire.

After each of the colleges had taken its decisions separately by majority vote, the three directors, often with the 'help' of the emperor's commissioner, had to combine them into an agreed statement. Consensus or unanimity among the three colleges was required, but the college of the imperial cities had to await an agreement between the electors and the princes, which they usually, but not always, accepted. This procedure, which bears similarities to proceedings between the House of Lords and the House of Commons,²⁵ was known as *Re- und Korrelation*. Its product, the *Reichsgutachten* or resolution of the Empire was announced to the emperor (or rather, the commissioner and the Imperial Chancery) who could reject or ratify the resolution and therefore had the power of veto: only the emperor could accord the resolutions of the diet the character of imperial law. He did not, however, have the power to favour the decision of one or two of the colleges in order to create a majority or modify the outcome, and only in very specific cases could he except parts of the resolution from his ratification, a method that Francis II (r. 1792–1806) used for the last time in the case of the principal recess of the imperial deputation of 1803.²⁶

Only in religious matters was ordinary procedure suspended, and the diet permitted to split into two religious bodies (*corpus evangelicorum* and *corpus catholicorum*), which had to negotiate a mutual agreement. Though this was not a common procedure (it was used only seven times), it provided the Protestant and/or Prussian faction in particular with a bargaining chip.²⁷ On the whole, however, a narrow formal majority was never sufficient to pass an act. The consent of the major Estates and the emperor was forthcoming in many cases, and negotiation, conciliation, and mutual agreement strongly influenced decision-making—not always to the benefit of unity, and often resulting in vague decisions or even the obstruction of legislation. On the other hand, the complex procedure prevented the abuse of power and at times

²⁵ Peter D. G. Thomas, *The House of Commons in the Eighteenth Century* (Oxford, 1971); Kümin, 'Commons', 287–8.

²⁶ Karl Härter, 'Der Hauptschluß der außerordentlichen Reichsdeputation vom 25. Februar 1803: Genese, Dynamik und Ambivalenz der legalen "Revolutionierung" des Alten Reiches', *Geschichte in Wissenschaft und Unterricht*, 54 (2003), 484–500.

²⁷ Klaus Schlaich, 'Maioritas—protestatio—itio in partes—corpus Evangelicorum: Das Verfahren im Reichstag des Hl. Römischen Reichs Deutscher Nation nach der Reformation', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung*, 94 (1977), 264–99 and 95 (1978), 139–79.

fostered the settlement of conflicts in a flexible, legitimate, and accepted manner.

Many assemblies in early modern Europe had comparable proceedings oscillating between the principles of majority and consent, and actually based on negotiation, conciliation, and agreement. Only in a few cases did this result in extreme forms of procedure. In the Polish *Sejm* or the Swiss *Tagsatzung*, for example, one dissenting vote could prevent a decision, paralysing the assemblies from time to time. However, early modern assemblies did not function only on the basis of strict norms and principles, and we should not judge them by modern standards of procedure and law, based on the principles of majority and binding law.²⁸ Indeed, the diet's decisions were regarded as laws binding on every member of the Empire, with considerable problems of enforcement because this was the chief task of the Estates themselves. On the other hand, the complex procedure—decision by majority and mutual agreement between colleges and the emperor or the two religious bodies—implied that decisions and laws possessed more of the character of contracts, treaties, or even agreements and therefore cannot be measured by the standards of modern law based on majority decisions.

When viewed in the context of other assemblies in Europe, the output of the permanent imperial diet was average, sometimes even above average, although compared to the English Parliament (with 13,000 laws) it was clearly low.²⁹ The period between 1663 and 1720 was one of intense activity, in which the diet produced constitutive decisions and 'fundamental laws' in the areas of public law on the

²⁸ Graves, *Parliaments*, 209–12; John H. Grever, 'The Structure of Decision-Making in the States General of the Dutch Republic 1660–1668', *Parliaments, Estates and Representation*, 2 (1982), 125–53; Olaf Mörke, 'Kohärenzstiftung durch Verfahren im partikularisierten Staat: Die Generalstände in der niederländischen Republik', in Barbara Stollberg-Rilinger (ed.), *Vormoderne politische Verfahren* (Berlin, 2001), 521–57; Ronald G. Asch, 'Zeremoniell und Verfahren des englischen Parlaments zwischen Normierung und Innovation, ca. 1558–1642', *ibid.* 493–520; Thomas, *House of Commons*; Ritter, 'Das britische Parlament'; Niklaus Bütikofer, 'Zur Funktion und Arbeitsweise der Eidgenössischen Tagsatzungen zu Beginn der frühen Neuzeit', *Zeitschrift für historische Forschung*, 13 (1986), 15–41; Aronsson, 'Schwedischer Reichstag'.

²⁹ Johannes Burkhardt, 'Verfassungsprofil und Leistungsbilanz des immerwährenden Reichstags: Zur Evaluierung einer frühmodernen Institution', in Heinz Duchhardt and Matthias Schnettger (eds.), *Reichsständische Libertät und habsburgisches Kaisertum* (Mainz, 1999), 151–83; Joanna Innes, 'Legislating for Three Kingdoms: How the Westminster Parliament Legislated for England, Scotland and Ireland 1707–1830', in Julian Hoppit (ed.), *Parliaments, Nations and Identities in Britain and Ireland, 1660–1850* (Manchester, 2003), 15–47.

economy (Reichsmerkantilismus), coinage, public security, the imperial execution order (Reichsexekutionsordnung) of 1555, and war and peace (with the Turks, France, and so on). By contrast, the diet's legislation in the spheres of penal and civil law was sparse, and on the whole its activities decreased considerably in the middle of the eighteenth century,³⁰ a phenomenon also noticeable among other assemblies in eighteenth-century Europe, such as the Swiss *Tagsatzung*, the Swedish *Riksdag*, and the paralysed Polish *Sejm*. It resulted from fundamental conflicts between the Estates and attempts by rulers to restrain participation in the legislative process, which in many cases succeeded only temporarily.³¹ From the 1780s onward, and especially after the outbreak of the French Revolution and the Coalition Wars, the diet intensified its activities once again. It produced relevant legislation, some of it fostering reform, for instance, of the Imperial Chamber Court, with the aim of combating revolutionary tendencies, or of the imperial war constitution (Reichskriegsverfassung) and the imperial circles, and, ultimately, the principal recess of the imperial deputation of 1803, which was intended not as the death certificate of the Empire, but as a last-ditch effort to save the imperial constitution.³²

When it came to the European conflicts of the period between 1663 and 1806, the diet was certainly far from playing a major role. Often reluctant to declare an imperial war (Reichskrieg), it did, however, take the necessary decisions concerning the military constitution of the Empire, especially in mobilizing the imperial army and levying war taxes (Römermonate). In the majority of cases the diet agreed only on a minimum of military power to conduct a defensive war, which was often insufficient to defend the Empire's interests. The Estates distrusted the emperor, suspecting that he would misuse the Empire's resources, and the

³⁰ Burkhardt, 'Verfassungsprofil und Leistungsbilanz'; Winzen, *Handwerk—Städte—Reich*; Karl Härter, 'Reichsrecht und Reichsverfassung in der Auflösungsphase des Heiligen Römischen Reichs deutscher Nation: Funktionsfähigkeit, Desintegration und Transfer', *Zeitschrift für Neuere Rechtsgeschichte*, 28 (2006), 316–37; Fritz Bläich, *Die Wirtschaftspolitik des Reichstags im Heiligen Römischen Reich: Ein Beitrag zur Problemgeschichte wirtschaftlichen Gestaltens* (Stuttgart, 1970); Heinz Wenkebach, *Bestrebungen zur Erhaltung der Einheit des Heiligen Römischen Reichs in den Reichsschlüssen von 1663 bis 1806* (Aalen, 1970); Thomas Christmann, *Das Bemühen von Kaiser und Reich um die Vereinheitlichung des Münzwesens: Zugleich ein Beitrag zum Rechtssetzungsverfahren im Heiligen Römischen Reich nach dem Westfälischen Frieden* (Berlin, 1988).

³¹ Graves, *Parliaments*, 195–7; Sven Ulric Palme, 'Vom Absolutismus zum Parlamentarismus in Schweden', in Gerhard (ed.), *Vertretungen*, 368–97; Roos, 'Ständewesen'; Würigler, 'Tagsatzung'.

³² Härter, 'Reichsrecht und Reichsverfassung'.

diet's legal orientation and procedures generally inhibited it (and in a sense even the emperor) from adopting an aggressive power policy. We can observe similar configurations in the *Sejm*, the States General, and the *Tagsatzung*. The permanent diet concentrated instead on matters of security and peace within the Empire (Reichsfrieden), often commissioning the emperor and sometimes a deputation to negotiate the peace. Although the diet frequently had only minor influence on current politics, for which the Empire had to pay the price, the deputations and the emperor were compelled to communicate the negotiations and justify their decisions in order at least to obtain the diet's formal recognition of peace treaties, which was necessary to attain a sufficient level of acceptance and legitimacy in the Empire.³³

In matters of international politics, war, and peace—the domain of the ruler—many assemblies in early modern Europe played only a minor role, often doing no more than granting taxes to the crown.³⁴ The activities of the permanent imperial diet do not deviate from this norm. While it could not pursue international politics without the emperor, it was, however, involved in communicating, negotiating, and mediating, sometimes even playing a more active and crucial role. On the whole, the diet adhered to a defensive policy, maintaining the status quo and balance in the Empire (even at a lower level), thus contributing to the overall functioning of the Empire as a constitutional, legal system. In this regard, a few prominent writers such as William Penn (1644–1718), the abbé de Saint-Pierre (1658–1743), and Rousseau (1712–78) regarded the permanent imperial diet as a model for a future European parliament that would maintain the balance of power and peace in Europe.³⁵

In the domain of imperial justice the diet, like other European assemblies, exerted control over the Imperial Chamber Court, in particular, by means of regular or extraordinary inspections and, moreover, performed judicial functions.³⁶ Despite the failure, in

³³ Karl Härter, 'Sicherheit und Frieden im frühneuzeitlichen Alten Reich: Zur Funktion der Reichsverfassung als Sicherheits- und Friedensordnung 1648–1806', *Zeitschrift für historische Forschung*, 30 (2003), 413–31.

³⁴ Graves, *Parliaments*, 192–5; Jeremy Black, *Parliament and Foreign Policy in the Eighteenth Century* (Cambridge, 2004).

³⁵ Olaf Asbach, 'Die Reichsverfassung als föderativer Staatenbund: Das Alte Reich in der politischen Philosophie des Abbé de Saint-Pierre und Jean-Jacques Rousseaus', in id., Maletke, and Externbrink (eds.), *Altes Reich*, 171–218.

³⁶ Karl Otmar Freiherr von Aretin, *Kaiser Joseph II. und die Reichskammergerichtsvisitation*

the 1760s and 1770s, of the extraordinary inspection ordered by Joseph II (r. 1765–90) and the diet's inability to resolve the conflict, it proved successful in the long run in creating a legal framework that ensured the proper functioning of the imperial justice system. In the 1780s the diet passed a reform of the Imperial Chamber Court that enabled the high court to work properly and effectively even after the outbreak of the French Revolution. Moreover, parties could contest the decisions of the imperial courts by applying to the diet (*recursus ad comitiam*). Beyond this recourse, interested parties could also petition for extrajudicial aid in legal conflicts. Although the permanent diet was not flooded with, let alone obstructed by, such recourses and petitions (as some of the older scholarship suggests), it acted as a superior court or rather mediator between contending parties, not in terms of the quantity of its decisions, but by accepting and sometimes considering recourses, petitions, and legal complaints, thus providing them with a public platform. This gave the imperial permanent diet functions it shared with many other early modern assemblies or parliaments, which nowadays are described as 'infrajustice' and 'legal mediation'.³⁷

When it came to business, decision-making, and decisions, we should not judge the diet or other early modern assemblies solely by the laws they passed or their ability to support the power politics of the ruler or the state. Their very procedures, votes, and negotiations, and even their unfinished drafts, also generated norms and imperial laws such as the permanent imperial capitulation (*Ständige Wahlkapitulation*). All the written and unwritten communications produced within the sphere of the diet, the votes, records, documents, drafts, comments, statements, complaints, petitions, notes, and the actual political practice, the rituals, and ceremonies created an enormous body of imperial law: ambiguous, flexible, open to interpretation and negotiation, but often the

1767–1776 (Wetzlar, 1991); Karl Härter, 'Der Rekurs des Fürsten Friedrich Karl von Wied-Neuwied: Zum Verhältnis von Reichskammergericht und Reichstag am Ende des Alten Reiches', in Heinz Mohnhaupt and Dieter Simon (eds.), *Vorträge zur Justizforschung: Geschichte und Theorie*, 2 vols. (Frankfurt am Main, 1992–3), ii. 245–84.

³⁷ Beat Kümin and Andreas Würzler, 'Petitions, Gravamina and the Early Modern State: Local Influence on Central Legislation in England and Germany (Hesse)', *Parliaments, Estates and Representation*, 17 (1997), 39–60; Cecilia Nubola and Andreas Würzler (eds.), *Suppliche e 'gravamina': Politica, amministrazione, giustizia in Europa (secoli XIV–XVIII)* (Bologna, 2002).

only available means of reaching a compromise and resolving problems and conflicts in a legal way. On the whole, the diet's procedures and decision-making can be characterized—even by comparison with other early modern assemblies—as highly sophisticated constitutional arrangements that, while often viewed as a source of weakness, should be regarded instead as adequate forms of negotiation and mediation leading to contractual, legally based 'arrangements' within the complex politically, religiously, and territorially fragmented system of the Empire.

The Centre of a Living Constitution

This brings us to the final point, and to a brief conclusion: the permanent imperial diet as the centre of a 'living constitution', that is, the constitutional life and the political culture of the Empire. With regard to its constitutional function as a communicative system, the permanent imperial diet seems to be a prototype of an early and, in a sense, postmodern assembly, where members could articulate, negotiate, and reconcile their interests and policies, mediate and display conflicts, conduct information politics, build and organize networks, exercise patronage, and even represent politics by ceremony, ritual, and the use of the diet as a public stage.³⁸ This allowed minor and medium-sized Estates, in particular, to gain the aid or mediation of more powerful partners, to exchange information and political opinions, and to display political positions and conflicts in the public sphere of the diet by publishing and distributing different kinds of printed materials, often using legal arguments and tactics. The more powerful Estates and even the emperor and some European countries also used the diet as a forum for the clarification of political interests, the settlement of disputes, and the formation of alliances.

After all, Regensburg—and the diet—was the place in the Empire where the widest public could be reached.³⁹ As has been mentioned, anyone could make an official complaint, petition, application, proposal, and so on, to the diet or, rather, to its director (Electoral Mainz as the imperial arch-chancellor, or Saxony

³⁸ Barbara Stollberg-Rilinger, *Des Kaisers alte Kleider: Verfassungsgeschichte und Symbolsprache des Alten Reiches* (Munich, 2008).

³⁹ See Susanne Friedrich, *Drehscheibe Regensburg: Das Informations- und Kommunikationssystem des Immerwährenden Reichstags um 1700* (Berlin, 2007).

as the head of the *corpus evangelicorum*), who, in turn, would reject it or adopt it into the records of the Empire, normally with the consent of the main Estates.⁴⁰ In the latter case, these documents were 'dictated' to and thereby officially distributed among the deputies, who sent them to their Estates, often with comments and additional information. Furthermore, many political works, documents, papers, and pamphlets were distributed in Regensburg without the official endorsement of the diet. They were also sent by the deputies and diplomats to their clients, commented on, discussed, and answered in counter-statements, which often resulted in public disputes. According to the diet's journal (*Reichstags-Diarium*), 268 documents were officially dictated by the director of the diet or the director of the *corpus evangelicorum*, and 783 printed documents were distributed among the diplomats between 1753 and 1757, the beginning of the Seven Years War (see Table 7.1).

TABLE 7.1. *Number of documents dictated and distributed at the Reichstag, 1753–7*

Year	Documents dictated	Documents distributed
1753	65	125
1754	61	124
1755	43	43
1756	37	114
1757	62	377
Total	268	783

Source: Compiled by the author from Christian Gottfried Oertel, *Reichs-Tags-Diarium*, 7 vols. (Regensburg, 1752–65).

In this respect, the diet was a marketplace of information and the centre of the constitutional discourse in the Old Reich. It even attracted the attention of a wider European audience through the reports of deputies, diplomats, and several newspapers, as well as accounts in the topical writing on the Empire and the philosophical, legal, and political literature. When it came to its character as a constitutional public sphere and centre for the distribution of printed information, of all the assemblies in Europe only the English Parliament surpassed the permanent diet.⁴¹ All in all, the

⁴⁰ Härter, 'Kurmainzer Reichstagsdirektorium'.

⁴¹ Perhaps the diet was on a par with the States General; for an overview of the printed materials produced by the diet, see Karl Härter, 'Reichsgesetzgebung und Reichsrecht', in Josef Pauser, Martin Scheutz, and Thomas Winkelbauer (eds.), *Quellenkunde der Habsburgermonarchie (16.–18. Jahrhundert): Ein exemplarisches Handbuch* (Vienna, 2004), 312–26.

permanent diet provided the functions and environment for the transfer of politics and conflicts into a public and legally structured sphere. This could result either in informal conflict management and mediation, or in formal proceedings, but the latter were more often the exception than the rule. After all, using and mobilizing networks and the public could undeniably aggravate conflicts, hinder and delay formal proceedings and decisions, or ultimately paralyse the entire diet. Dilatory politics, however, also flourished in many other early modern assemblies and figured as a means of parliamentary procedure.⁴²

To conclude briefly by situating the permanent imperial diet in a comparative European context, it may be noted that, despite some periods of lesser activity, the imperial diet, together with the States General, the *Tagsatzung*, and the English Parliament, was the only central assembly that developed not merely permanent sessions but continuous, enduring activities and functions for the entire 'commonwealth'. As regards its members and the problem of representation, the diet was far from serving as a prototype, or even the basis for the development of modern democratic parliamentary institutions, and it is therefore not comparable to the English Parliament. With respect to more federally organized 'commonwealths', whose assemblies met as congresses of deputies, the diet is structurally comparable to the *Tagsatzung* or the States General, apart from the role of the emperor, who should be understood as an integral part of the diet, and not as its opponent.

The problem of the diversification of political participation generated complex procedures that combined the principles of majority and unanimity, and were characterized by negotiation, mediation, agreement, and decisions or laws with a contractual quality—not so very different from other assemblies, albeit with somewhat peculiar characteristics. When it came to its business and functions, the diet was less engaged in questions of taxation than many of its European counterparts, but overall achieved a broad range of competences including matters of war and peace, an area of policy beyond the purview of many assemblies.

However, we need to move beyond the old models of power politics or assembly versus ruler. Judged by criteria such as political culture, communication, and the provision of a public sphere,

⁴² Graves, *Parliaments*, 184–6.

the permanent imperial diet was far more than the 'babbling assemblage' often described in older accounts. It was, instead, the centre of a 'living constitution' within the complex federal system of the Empire. In this respect, the permanent imperial diet not only bears comparison with its European 'cousins'; like the Empire as a whole, it was also integrated into the European context as the model of a peaceful order bound by the rule of law.