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From the state of princes to the person of the state

I

The English translation of Thomas Hobbes's *De Cive,* first published in 1651, begins by promising to undertake 'a more curious search into the rights of States, and duties of Subjects'.[1] The Introduction to *Leviathan*, first published in the same year, similarly announces that the aim of the work will be to anatomise 'that great LEVIATHAN, called a COMMON-WEALTH, or STATE'.[2] Since that time, the idea that the confrontation between individuals and states furnishes the central topic of political theory has come to be almost universally accepted. This makes it easy to overlook the fact that, when Hobbes spoke in these terms, he was self-consciously setting a new agenda for the discipline he claimed to have invented, the discipline of political science.[3] His suggestion that the duties of subjects are owed to an agency called the state, rather than to the person of a ruler, was still a relatively new and highly contentious one. So was his implied assumption that our duties are owed exclusively to the state, rather than to a multiplicity of jurisdictional authorities, local as well as national, ecclesiastical as well as civil in character. So, above all, was his use of the term *state* to denote this highest source of authority in matters of civil government.

Hobbes's declaration can thus be viewed as marking the end of one phase in the history of political theory and the beginning of another and more familiar one. It announces the end of an era in which the concept of public power had been analysed in more personal and charismatic terms. It points to a simpler and more abstract vision of sovereignty as

This chapter is an extensively revised and much expanded version of an essay that originally appeared under the title 'The State' in *Political Innovation and Conceptual Change*, ed. Terence Ball, James Farr and Russell L. Hanson (Cambridge, 1989), pp. 90–131.

[1] Hobbes 1983b, Preface, p. 32. On the translation see Warrender 1983, pp. 1–4. On the author of the translation (the poet Charles Cotton) see Malcolm 2000.

[2] Hobbes 1996, Introduction, p. 9. [3] Hobbes 1839, p. ix.

the property of an impersonal agency, a vision that has remained with us ever since and has come to be embodied in the use of such terms as *état*, *stato*, *Staat* and state. My aim in what follows will be to sketch the historical circumstances out of which these linguistic and conceptual transformations arose.[4]

II

As early as the fourteenth century, the Latin term *status* – together with such vernacular equivalents as *estat*, *stato* and *state* – can already be found in general use in a variety of political contexts. During this formative period, these terms were predominantly employed to refer to the state or standing of rulers themselves.[5] One important source of this usage was the rubric *De statu hominum* from the opening of the *Digest* of Roman law. There the authority of Hermogenianus is adduced for the claim that, 'since all law is established for the sake of human beings, we first need to consider the status of such persons, before we consider anything else'.[6] Following the revival of Roman law studies in twelfth-century Italy, the word *status* came in consequence to designate the legal standing of all sorts and conditions of men, with rulers being described as enjoying a distinctive 'estate royal', *estat du roi* or *status regis*.[7]

When the question of a ruler's status was raised, the reason for doing so was generally to emphasise that it ought to be viewed as a state of majesty, a high estate, a condition of stateliness. Within the well-established monarchies of France and England, we encounter this formula in chronicles and official documents throughout the latter half of the fourteenth century. Jean Froissart recalls in Book I of his *Chroniques* that, when the young king of England held court to entertain visiting dignitaries in 1327, 'the queen was to be seen there in an *estat* of great nobility'.[8] The same usage recurs poignantly in the speech made by William Thirnyng to Richard II in 1399, in which he reminds his former sovereign 'in what presence you renounced and ceased of the state of King, and of lordship and of all the dignity and worship that [be]longed thereto'.[9]

[4] But for a critique of this approach see Nederman 1985.
[5] Hexter 1973, p. 155.
[6] *Digest* (1985), I. V. 2, vol. 1, p. 15: 'Cum igitur hominum causa omne ius constitutum sit, primo de personarum statu ac post de ceteris . . . dicemus.'
[7] Post 1964, pp. 333–67, 368–414.
[8] Froissart 1972, p. 116: 'La [*sc.* la reine] peut on veoir de l'estat grand noblece.'
[9] *Rotuli Parliamentorum 1278–1503*, vol. 3, p. 424, col. 1.

Underlying the suggestion that a distinctive quality of stateliness 'belongs' to kings was the prevailing belief that sovereignty is intimately connected with display, that the presence of majesty serves as an ordering force. This was to prove the most enduring of the many features of charismatic leadership eventually subverted by the emergence of the modern concept of an impersonal state.[10] As late as the end of the seventeenth century, it is still common to find political writers using the word *state* to point to a connection between the stateliness of rulers and the efficacy of their rule. As one might expect, exponents of divine-right monarchy such as Bossuet continue to speak of the *état* of *majesté* in just such terms.[11] But the same assumptions survived even among the enemies of kingship. When John Milton, for example, describes in his *History of Britain* the immortal moment when King Canute ordered the ocean to 'come no further upon my land', Milton observes that the king sought to give force to his extraordinary command by speaking 'with all the state that royalty could put into his countenance'.[12]

By the end of the fourteenth century, the term *status* was also in regular use to refer to the state or condition of a realm or commonwealth.[13] This conception of the *status reipublicae* was likewise classical in origin, and can be found in the histories of Livy and Sallust[14] as well as in Cicero's orations and political works.[15] It can also be found in the Codex of Roman law, most notably in the opening rubric of the *Digest*, where the analysis begins with Ulpian's contention that law is concerned with two arenas, the public and the private, and that 'public law is that which pertains to the *status rei Romanae*'.[16]

With the revival of Roman law studies, this further piece of legal terminology likewise passed into general currency. It became usual in the fourteenth century, both in France and in England, to discuss 'the state of the realm' or *estat du roilme*.[17] Speaking of the year 1389, for example, Froissart remarks that the king decided 'to reform the country *en bon état*, so that everyone would be contented'.[18] The idea of linking the

[10] For a comparison between systems of state power in which the ordering force of display is proclaimed, and those in which (as in the modern West) it is obscured, see Geertz 1980, pp. 121–3, whose formulation I have adopted.

[11] Bossuet 1967, pp. 69, 72. [12] Milton 1971, p. 365.

[13] See Ercole 1926, pp. 67–8; Rubinstein 1971, pp. 314–15; Hexter 1973, p. 155.

[14] See, for example, Livy 1949, XXX. II. 8, p. 372; Sallust 1931a, XL. 2, p. 68.

[15] See, for example, Cicero 1913, II. I. 3, p. 170.

[16] *Digest* 1985, I. I. 2, vol. 1, p. 1: 'publicum ius est quod ad statum rei Romanae spectat'.

[17] Post 1964, pp. 310–22.

[18] Froissart 1824–6, vol. 12, p. 93: 'Le roi . . . réforma le pays en bon état, tant que tous s'en contentèrent.'

good state of a king and his kingdom soon became a commonplace. By the middle of the fifteenth century, petitioners to the English parliament regularly ended their pleas by promising the king that they would 'tenderly pray God for the good estate and prosperity of your most noble person of this your noble realm'.[19]

If we turn from northern Europe to the Italian city-republics, we encounter the same terminology at an even earlier date. As we saw in chapter 2, the earliest advice-books for *podestà* and other city magistrates were produced in the opening decades of the thirteenth century. These manuals already make it clear that their principal concern is with the *status civitatis*, the state or condition of the city as an independent political entity. The *Oculus Pastoralis* repeatedly employs the phrase,[20] as does Giovanni da Viterbo in his treatise *De Regimine Civitatum* of c.1250.[21] By the start of the fourteenth century we begin to encounter the same concept in the vernacular, with writers of *Dictamina* such as Filippo Ceffi offering extensive instructions to magistrates on how to maintain the *stato* of the city given into their charge.[22]

Discussing the state or standing of such communities, the advice generally tendered by these writers is that magistrates have a duty to maintain their cities in a good, happy and prosperous state.[23] The ideal of upholding the *bonus* (or even the *optimus*) *status reipublicae* was again Roman in origin; the phrase occurs with some frequency in Cicero and Seneca.[24] The author of the *Oculus Pastoralis* similarly speaks of the need to preserve one's city in a happy, advantageous, honourable and prosperous *status*.[25] Giovanni da Viterbo likewise insists on the desirability of maintaining the *bonus status* of one's community,[26] while Filippo Ceffi writes with equal confidence in the vernacular of the obligation to sustain one's city in 'a good *stato* and complete peace'.[27]

[19] Shadwell 1912, vol. 1, p. 64 (Petition from the abbey of Syon). See also Shadwell 1912, vol. 1, pp. 66, 82 *et passim*.

[20] *Oculus* 1966, pp. 26, 27, 28 *et passim*.

[21] Viterbo 1901, pp. 230, 231, 232 *et passim*. For the date see Sorbelli 1944.

[22] Ceffi 1942, 27, 47, 48 *et passim*.

[23] Ercole 1926, pp. 67–8; Post 1964, pp. 18–24, 310–32, 377–81; Rubinstein 1971, pp. 314–16; Mansfield 1996, pp. 284–6.

[24] For references to the *optimus status reipublicae* see Cicero 1927, II. XI. 27, p. 174 and Cicero 1931, V. IV. 11, p. 402. For the *optimus civitatis status* see Seneca 1929–35, II. XX. 2, vol. 3, p. 92.

[25] *Oculus* 1966, p. 26: 'ad . . . comodum ac felicem statum civitatis huius', and p. 28: 'ad honorabilem et prosperum statum huius comunitatis'.

[26] See Viterbo 1901, p. 230 on the 'bonus status totius communis huius civitatis'.

[27] Ceffi 1942, p. 47: 'in tutta pace e buono stato'.

These writers also provide the earliest restatements of the classical view of what it means for a city or *respublica* to attain its best state.[28] Our magistrates must follow the dictates of justice in all their public acts, so that the common good is promoted, the cause of peace upheld and the happiness of the people assured. This line of reasoning is later taken up by Aquinas and his Italian disciples at the end of the thirteenth century. Aquinas presents the argument at several points in his *Summa* as well as in his commentary on Aristotle's *Politics*. 'A judge has care of the good of the community, based on justice, which is why he desires death for the criminal, because this has the character of good in relation to the common *status*.'[29] The same line of reasoning had already been put forward a generation earlier by the writers of advice-books for city magistrates. Giovanni da Viterbo speaks in very similar vein of the *optimus status* in his treatise *De Regimine Civitatum*, while Brunetto Latini reiterates Giovanni's argument in his chapter *Dou gouvernement des cités* at the end of his encyclopaedic *Li Livres dou trésor* in 1266.[30]

This vision of the *optimus status reipublicae* later became central to *quattrocento* humanist accounts of the well-ordered political life. When Giovanni Campano (1427–77)[31] analyses the dangers of faction in his tract *De Regendo Magistratu*, he declares that 'there is nothing I count more unfavourable to the *status* and safety of a *respublica*'.[32] If the right *status* of a community is to be preserved, all factional advantage must be subordinated to the pursuit of the common good.[33] Filippo Beroaldo (1453–1505) endorses the same conclusion in a treatise to which he actually gave the title *De Optimo Statu*. The best *status*, he agrees, can be attained if and only if our magistrates 'set aside the pursuit of their own advantages and ensure that they act in everything in such a way as to promote the public benefit'.[34]

[28] Note that they begin to discuss this issue nearly a century earlier than such chroniclers as Giovanni Villani, one of the earliest sources usually cited in this context. See Ercole 1926, pp. 67–8; Rubinstein 1971, pp. 314–16; Hexter 1973, p. 155 and cf. Villani 1802–3, vol. 3, p. 159; vol. 4, p. 3 *et passim*.

[29] Aquinas 1952, I^{a}. II^{ae}, Qu. 19, art. 10, Resp., p. 104: 'nam iudex habet curam boni communis, quod est iustitia, et ideo vult occisionem latronis, quae habet rationem boni secundum relationem ad statum communem'.

[30] Viterbo 1901, pp. 220–2. Cf. Latini 1948, pp. 402–5, paraphrasing Giovanni's account.

[31] In providing dates for the more obscure humanists I have relied on Cosenza 1962.

[32] Campano 1502, fo. xxxxvii^{r}: 'nihil existimem a statu et salute reipublicae alienius'.

[33] Campano 1502, fo. xxxxvii^{r-v}.

[34] Beroaldo 1508, fo. xv^{v}: 'oblitis suorum ipsius commodorum ad utilitatem publicam quicquid agit debet referre'.

The Erasmian humanists imported the same values and vocabulary into northern Europe in the early decades of the sixteenth century. Erasmus himself contrasts the *optimus* with the *pessimus reipublicae status* in his *Institutio Principis Christiani* of 1516,[35] arguing that 'the happiest *status* is reached when everyone obeys the prince, when the prince obeys the laws and when the laws answer to our ideals of honesty and equity'.[36] His younger contemporary Thomas Starkey offers a similar account in his *Dialogue* of what constitutes 'the most prosperous and perfect state that in any country, city or town, by policy and wisdom may be established and set'.[37] And in Thomas More's *Utopia* the figure of Raphael Hythloday likewise insists that, because the Utopians live in a society in which the laws embody the principles of justice and allow everyone to live 'as happily as possible',[38] we are justified in saying that the Utopians have attained the *optimus status reipublicae*, the best state of a commonwealth.[39]

III

I now turn to examine how these early uses of *status* and its vernacular equivalents mutated in such a way as to give these terms their modern range of reference.[40] Historians who have addressed this question have generally concentrated on the evolution of legal theories about the *status* of rulers in the fourteenth and fifteenth centuries.[41] It was rare, however, even for civil lawyers to use the Latin word *status* without qualification, and it was virtually unknown for political writers to employ such a barbarism at all.[42] Even when we encounter the term *status* in political contexts, it is almost always evident that what is at issue is the state or standing of a king or kingdom, not in the least the idea of the state as the institution

[35] Erasmus 1974, p. 162.

[36] Erasmus 1974, p. 194: 'felicissimus est status, cum principi paretur ab omnibus atque ipse princeps paret legibus, leges autem ad archetypum aequi et honesti respondent'.

[37] Starkey 1948, p. 63.

[38] More 1965, p. 244 states that their *Reipublicae fundamenta* have been established *felicissime.*

[39] More 1965, p. cxcv.

[40] On the term 'state' and the modern concept of the state see also Dyson 1980, pp. 18–19, 25–8, 206–14.

[41] See Kantorowicz 1957, pp. 207–32, 268–72; Post 1964, pp. 247–53, 302–9; Strayer 1970, pp. 57–9; Wahl 1977, p. 80. But for a valuable corrective see Ullmann 1968–9, pp. 43–4. For a survey of discussions about medieval origins see Fell 1991.

[42] François Hotman loftily dismisses such usages as late as the 1570s. See Hotman 1972, p. 332, observing that the powers of the Public Council extend 'to all those matters which the common people in vulgar parlance nowadays call Affairs of State' – 'de iis rebus omnibus, quae vulgus etiam nunc Negotia Statuum populari verbo appellat'.

in whose name legitimate government is exercised. If we wish to trace the origins of this transformation, it seems to me that we need to begin by focusing not on legal writings but rather on the advice-books for magistrates on which I have already commented, and above all on the mirror-for-princes literature to which they eventually gave rise.[43] It was within this latter tradition of practical political reasoning that the terms *status* and *stato* first began to be used in new and significantly extended ways.[44]

As we saw in chapter 5, the writers of handbooks for princes were generally preoccupied with two related questions of statecraft. Their loftiest aim was to explain how rulers can hope to attain the goals of honour and glory for themselves while at the same time managing to promote the happiness and welfare of their subjects.[45] But their main concern was with a more basic and urgent question of politics: how to advise the *signori* of Italy, often in highly unsettled circumstances, on how to hold on to their *status principis* or *stato del principe*, their state or standing as effective rulers of their existing territories.

As a result, the use of the term *stato* to denote the political standing of rulers, together with the discussion of how such rulers should behave if they wish *mantenere lo stato*, began to resound through the chronicles and advice-books of *trecento* Italy. When Giovanni Villani speaks in his *Istorie Fiorentine* of the civic dissensions that scarred the city during the 1290s, he observes that they were largely directed against the people in their *stato e signoria*.[46] When Ranieri Sardo in his *Cronaca Pisana* describes the accession of Gherardo d'Appiano in 1399, he remarks that the new *capitano* continued to enjoy the same *stato e governo* as his father had enjoyed before him.[47] By the time we reach Machiavelli's *Il Principe* of 1513, the question of what rulers should do to maintain their political standing had become the chief topic of debate. Machiavelli's advice is almost entirely directed at new princes who wish *mantenere lo stato*, to uphold their positions in whatever territories they may have managed to inherit or acquire.[48]

If such rulers are to prevent their state or standing from being altered to their disadvantage, they must clearly be able to fulfil a number of

[43] But for a critique of this proposal and a discussion of medieval uses of *status* and *état* see Harding 1994.

[44] Dowdall 1923, p. 102; Skinner 1978b, pp. 352–8; Ornaghi 1995, pp. 349–58. But for a critique of this thesis see Coleman 1997.

[45] For an early statement of these twin ideals see Petrarch 1554b, pp. 420–1, 428. For a classic restatement see Machiavelli 1960, p. 102.

[46] Villani 1802–3, vol. 4, pp. 24, 190–4. [47] Sardo 1845, pp. 240–1.

[48] For these phrases see Machiavelli 1960, pp. 16, 19, 22, 25–6, 27, 28, 35 *et passim*.

preconditions of effective government. If we turn to examine how these preconditions were formulated and discussed, we shall find that the terms *status* and *stato* were employed in an increasingly extended manner to refer to these various aspects of political power.[49]

One precondition of maintaining one's standing as a ruler is obviously that one should be able to preserve the character of one's existing regime. We accordingly find the terms *status* and *stato* being used from an early period to refer not merely to the state or condition of princes, but also to the presence of particular forms of government. This usage in turn appears to have arisen out of the habit of employing the term *status* to classify the types of rule described by Aristotle. Aquinas has sometimes been credited with popularising this development, since there are versions of his *Expositio* of Aristotle's *Politics* in which oligarchies are described as *status paucorum* and the rule of the people as the *status popularis*.[50] Such usages later became widespread in *quattrocento* humanist political thought. Filippo Beroaldo begins his *De Optimo Statu* with a typology of legitimate regimes, speaking of the *status popularis*, the *status paucorum* and even the *status unius* when referring to monarchies.[51] Francesco Patrizi of Siena (1412–94) opens his *De Regno* with a similar typology, one in which monarchy, aristocracy and democracy are all characterised as different types of *status*.[52] Writing in the vernacular at the same period, Vespasiano da Bisticci (1421–98) contrasts the rule of *signori* with the *stato populare*,[53] while Francesco Guicciardini invokes the same distinction a generation later in his *Discorsi* on the government of Florence.[54] Machiavelli likewise uses *stato* in just this fashion in a number of passages in *Il Principe*,[55] most notably in the opening sentence of the book, in which he informs us that 'all the *stati*, all the dominions that have had or now have power over men, either have been or are republics or principalities'.[56]

By this time the term *stato* was also in widespread use as a way of referring to prevailing regimes. When Giovanni Villani notes that in

[49] Rubinstein 1971 has already analysed some of these usages. While I have avoided duplicating his examples I am much indebted to his account.

[50] See Aquinas 1966, III. V, 385, p. 136 on the contrast between living 'in statu populari' and 'in statu paucorum'; VI. IV, 973, p. 319 on the 'status popularis'; VI. VI, 1008, p. 328 on the 'status paucorum'. Rubinstein 1971, p. 322 credits Aquinas with popularising these usages, but they were largely the product of humanist revisions of his text in the 1490s. See Cranz 1978 pp. 169–73 and cf. Mansfield 1996, p. 346 and further references there.

[51] Beroaldo 1508, fos. xi^{r} and xii^{v}. [52] Patrizi 1594a, pp. 16–17, 19, 21.

[53] Vespasiano 1970–6, vol. 1, p. 406. [54] Guicciardini 1932, p. 274.

[55] See Machiavelli 1960, pp. 28–9 on the *stato di pochi*.

[56] Machiavelli 1960, p. 15: 'Tutti li stati, tutti e' dominii che hanno avuto et hanno imperio sopra li uomini, sono stati e sono o republiche o principati.'

1308 'it was the members of the *parte Nera* who held control' in Florence, he speaks of the government they established as *lo stato de' Neri*.[57] When Ranieri Sardo writes about the fall of the Nove in Siena in 1355, he describes the change of regime as the loss of *lo stato de' Nove*.[58] When Vespasiano relates how the enemies of Cosimo de' Medici managed to set up a new government in 1434, he characterises the *coup* as a change of *lo stato*.[59] By the time we come to such theorists as Machiavelli's friend Francesco Vettori, writing in the early years of the sixteenth century, we find these usages firmly entrenched. Vettori employs the term *stato* not only to refer to different forms of government, but also to describe the prevailing regime in Florence that he wished to see defended.[60]

A second precondition of maintaining one's state as a ruler is obviously that one should suffer no loss or alteration of the territories given into one's charge. As a result of this further preoccupation, we find the terms *status* and *stato* pressed into service as a way of referring to the areas over which a ruler or chief magistrate needs to exercise control. When the author of the *Oculus Pastoralis* admonishes magistrates to care for the welfare of their cities, he speaks of their duty to maintain *suos status*.[61] When the authors of the *Gratulatio* addressed the people of Padua in 1310 to express the hope that the province will continue to live in peace, they declare that they are praying for the tranquillity of the whole *status*.[62] And when Ambrogio Lorenzetti explains in the verses accompanying his frescoes in the Sala de' Nove in Siena that all *signori* must cultivate the virtues, he gives as his reason that this is how they must act *per governar suo stato*.[63]

These usages proliferate in the chronicles and handbooks of the high Renaissance. When Ranieri Sardo wants to describe how the Pisans made peace in their territories in 1290, he says that the truce extended throughout the *stato*.[64] When Francesco Guicciardini remarks in his *Ricordi* that the French revolutionised warfare in Italy after 1494, producing a situation in which the loss of a single campaign brought with it the forfeiture of all one's lands, he describes such defeats as leading to the loss of *lo stato*.[65] So too with Machiavelli, who frequently uses the term *lo stato* in *Il Principe* to denote the lands or territories of princes. He writes at length in chapter 3 about the methods a wise prince must adopt if he

[57] Villani 1802–3, vol. 4, pp. 25, 190–1. Cf. Villani 1802–3, vol. 8, p. 186.
[58] Sardo 1845, p. 125. [59] Vespasiano 1970–6, vol. 2, pp. 171, 173.
[60] Vettori 1842, pp. 433, 436. Rubinstein 1971, p. 318 notes that these were already standard usages in late *quattrocento* Florence.
[61] *Oculus* 1966, p. 24. [62] *Gratulatio* 1741, p. 131.
[63] Starn and Partridge 1992, Appendix I, p. 264. [64] Sardo 1845, p. 91.
[65] Guicciardini 1933, p. 298.

wishes to acquire new *stati*; and he asks in chapter 24 why so many of the princes of Italy have lost their *stati* in the course of his own lifetime.[66]

Due in large measure to these Italian influences, the same usages can be found in northern Europe by the early decades of the sixteenth century. Guillaume Budé in his *L'Institution du prince* equates the range of *les pays* commanded by Augustus after his victory over Antonius with the extent of *son estat*.[67] Thomas Starkey in his *Dialogue* speaks of the need to establish a Council in England to 'represent the whole state'.[68] And when Lawrence Humfrey wishes to warn us in *The Nobles* that a ruler's bad behaviour can easily corrupt his entire kingdom, what he says is that his vices can spread 'into the whole state'.[69]

As these writers emphasise, however, by far the most important precondition of maintaining one's state as a ruler must be to keep one's hold over the existing institutions of government within one's *regnum* or *civitas*. This gave rise to the most important linguistic innovation that can be traced to the chronicles and political treatises of Renaissance Italy. The crucial development took the form of an extension of the term *stato* to refer not merely to prevailing regimes but also, and more specifically, to the institutions of government and the means of coercive control that serve to preserve order within political communities.

Vespasiano speaks on several occasions in his *Vite* of *lo stato* as just such an apparatus of political authority. In his life of Alessandro Sforza he describes how Alessandro conducted himself in the government of *lo stato*,[70] and in his life of Cosimo de' Medici he praises Cosimo for recognising how difficult it is to hold power over *uno stato* when opposed by influential citizens.[71] Guicciardini in his *Ricordi* similarly asks why the Medici lost control of *lo stato* in 1527, and later observes that they found it much harder than Cosimo had done to maintain their hold over *lo stato di Firenze*.[72] Castiglione likewise makes it clear in his *Libro del Cortegiano* that he thinks of *lo stato* as a power structure that a prince needs to control and dominate. He speaks in Book 2 of the need for courtiers 'to be prudent and wise when taking part in discussions about *stati*',[73] and he explicitly

[66] Machiavelli 1960, pp. 18, 22, 24, 97.

[67] Budé 1966, p. 140. Delaruelle 1907, p. 201 notes that, although Budé's *Institutio* was not published until 1547, it was completed by the start of 1519.

[68] Starkey 1948, p. 167. [69] Humfrey 1563, Sig. Q, 8^{v}.

[70] Vespasiano 1970–6, vol. 1, p. 426.

[71] Vespasiano 1970–6, vol. 1, pp. 177, 192. On the latter passage see Rubinstein 1971, p. 318.

[72] Guicciardini 1933, pp. 287, 293. Guicciardini – but not Machiavelli – also speaks explicitly of *ragione di stato*. See Maffei 1964, pp. 712–20. For the subsequent history of the concept in *cinquecento* Italy see Meinecke 1957, pp. 65–145 and Borrelli 1993.

[73] Castiglione 1981, II. XXII, p. 151: '. . . nei discorsi de' stati prudente e savio'. Hoby's translation of 1561 renders this as 'discourses uppon states'. See Castiglione 1994, p. 125.

distinguishes at the outset of Book 4 between ruling families and the states over which they rule.[74]

Of all these writers of advice-books, it is Machiavelli in *Il Principe* who shows the most consistent willingness to distinguish the institutions of *lo stato* from those who have charge of them. He thinks of *stati* as having their own foundations, and speaks in particular of each *stato* as having its own particular laws, customs and ordinances.[75] He is willing in consequence to speak of *lo stato* as an independent agent, and describes it as capable, among other things, of choosing courses of action and calling in times of crisis on the loyalty of its citizens.[76] As he makes clear at several points, what he takes himself to be discussing in *Il Principe* is not merely how princes ought to behave. He also sees himself as writing more abstractly about statecraft (*dello stato*) and about *cose di stato* or affairs of state.[77]

It has often been argued that, with these observations of Machiavelli's, we already encounter an understanding of the state not merely as an apparatus of power but as an agent whose existence remains independent of those who exercise its authority at any given time.[78] There is not much evidence, however, to support this vision – originally Burckhardt's vision – of the Italian Renaissance as the crucible in which the modern idea of the state was formed.[79] Machiavelli and his contemporaries undoubtedly engineered an important innovation when they used the term *stato* to refer to the institutions of government, and thus to a distinct apparatus of power. But even Machiavelli usually takes pains to emphasise that the power in question remains that of the prince, and thus that in speaking of *lo stato* he is speaking of *il suo stato*, of the prince's own state or condition of rulership.[80] For all the importance of the writers I have been considering, none of them ever conceives of the state as the name of an agent distinguishable at once from rulers and ruled.[81]

[74] See Castiglione 1981, IV. II, p. 365, distinguishing 'la felicità della casa e dello stato'. Hoby renders this as 'the happines of the house and of the State'. See Castiglione 1994, p. 292.

[75] Machiavelli 1960, pp. 53, 76, 84.

[76] Machiavelli 1960, pp. 48, 92.

[77] Machiavelli 1960, pp. 21, 25.

[78] Cassirer 1946, pp. 133–7; Chiappelli 1952, p. 68; Chabod 1962, pp. 146–55; D'Entrèves 1967, pp. 30–2; Mansfield 1996, pp. 288–94.

[79] Burckhardt 1990, p. 23 speaks of the emergence in *trecento* Italy of 'the purely modern fiction of the omnipotence of the state', and adds (p. 73) that Machiavelli's Florence was 'the most important workshop' in which 'the modern European spirit' was formed. See also Chittolini 1979.

[80] Machiavelli 1960, pp. 16, 47, 87, 95.

[81] Even in France this arguably remains true until the 1570s. See Lloyd 1983, pp. 146–53. In Spain the old assumptions survive at least until the middle of the seventeenth century, *pace* Maravall 1961. See Elliott 1984, pp. 42–5, 121–2. Shennan 1974, pp. 113–14 notes that in Germany a patrimonial concept of government survived even longer.

IV

To trace the process by which the state eventually came to be viewed as an independent agent and as the seat of sovereignty, we need to turn away from the practical political literature on which I have so far concentrated. We need to turn first to consider two overlapping strands of constitutionalist theory that likewise rose to prominence in the course of the fifteenth and sixteenth centuries. One of these (which I shall examine in section V) was the contractarian theory associated with the so-called 'monarchomach' or king-killing writers of the later sixteenth century. The other was the tradition of Italian republicanism, a tradition that remained in contestation with the theory of princely government throughout the era of the Renaissance in Italy and beyond.

Turning first to the republican tradition, we need to recall that, as we saw in chapter 2, there were two distinct idioms in which the basic ideal of self-government was articulated. One was the juristic idiom of the legal commentators, many of whom made it their business to adapt the Roman law theory of *imperium* to the conditions of the Italian city-republics. The other was the more moralistic style of writing adopted by the admirers of Sallust, Cicero and the other defenders of the *vera respublica* in ancient Rome. As we have already seen, this was the idiom initially employed by the writers of treatises for city magistrates, and it was subsequently carried to new peaks of eloquence with the flowering of classical republicanism in the high Renaissance.

If there is any basic assumption shared by these two strands of republican thought, it is that all power corrupts and that absolute power corrupts absolutely. Any individual or group, once granted sovereignty over a community, will tend to promote their own interests at the expense of the common good. The only way to ensure that the laws promote the good of the community at large will therefore be to leave the citizens in charge of their own affairs. If their government is instead controlled by an authority external to their community, that authority will be sure to subordinate the good of the community to its own purposes. The same outcome will be no less likely under the rule of hereditary *signori* or princes. Since they will generally seek their own ends rather than the common good, the community will again forfeit its liberty to act in pursuit of whatever goals it may wish to set itself.

This basic insight was followed up in two distinct ways. It was used in the first place to justify assertions of civic autonomy, and hence to defend the *libertas* of the Italian cities against external interference. This demand was initially directed against the Empire and its claims to feudal

suzerainty over the *Regnum Italicum*. As we saw in chapter 2, the argument was mounted in detail by such jurists as Azo, and later by Bartolus, Baldus and their followers in the fourteenth century. Seeking to vindicate what Bartolus called 'the *de facto* refusal of the cities of Tuscany to recognise any superior in temporal affairs',[82] they evolved a legal theory according to which the ultimate bearer of sovereignty in any independent city must be the *universitas* or corporation of the people as a whole.[83]

This call for *libertas* was at the same time directed against potential rivals as sources of coercive jurisdiction within the cities themselves. One target was the power of local feudatories, who continued to be viewed, as late as Machiavelli's *Discorsi*, as the most dangerous of all the enemies of free states.[84] But the same hostility was no less vehemently displayed towards the jurisdictional pretensions of the church. The most radical response, embodied for example in Marsilius's *Defensor Pacis* of 1324, took the form of insisting that all coercive power must be secular by definition, and thus that the church can have no civil jurisdiction at all.[85] But even in the earliest treatises on city government, such as Giovanni da Viterbo's *De Regimine Civitatum* of c.1250, we already encounter a refusal to allow the church any say in civic affairs. The reason, as Giovanni expresses it, is that the ends of temporal and ecclesiastical authority are wholly distinct. If the church lays claim to any jurisdiction in political matters, it will simply be 'putting its sickle into another man's harvest'.[86]

The other way in which the basic insight of the republican tradition was developed was in the form of a positive claim about the type of regime we need to institute if we are to retain our *libertas*. The essence of the republican case is that the only form of government under which a city can hope to remain 'in a free state' will be a *respublica* in the strictest sense. The community must retain ultimate sovereignty, assigning its rulers and magistrates a status no higher than that of elected functionaries. These officials must in turn recognise that they are mere agents or *ministri* of justice, charged with the duty of ensuring that the laws established by the community for the promotion of its own good are equitably enforced.

[82] Bartolus 1562, XLVII. XXII, p. 779 on the 'civitates Tusciae, quae non recognoscunt de facto in temporalibus superiorem'. For Baldus on *de facto* sovereignty see Canning 1987, pp. 93–131.

[83] Michaud-Quantin 1970; Wahl 1977; Canning 1983, pp. 8–17; Canning 1987, pp. 185–97. For analogous reinterpretations of the Decretals see Mochi Onory 1951. For a valuable survey see Tierney 1982.

[84] Machiavelli 1960, I. 55, pp. 254–8.

[85] Marsilius 1928, II. 4, pp. 128–43.

[86] Viterbo 1901, p. 266: 'in alterius messem falcem suam mittere'.

This contrast between the freedom of republican regimes and the servitude implied by any form of monarchical government has often been viewed as the distinctive contribution of *quattrocento* Florentine thought.[87] As we saw in chapter 2, however, the underlying assumption that 'a free state' can only be achieved under a republic was already present in a number of much earlier writings on behalf of the Italian communes. It is certainly true, however, that the argument was worked out with the fullest assurance by the protagonists of the Venetian and Florentine republics in the era of the high Renaissance. Among Venetian writers, Gasparo Contarini furnished the best-known statement of the case in his *De Republica Venetorum* of 1543. Owing to the city's elective system of government, he declares, in which 'a mixture of the *status* of the nobility and of the people' is maintained, 'there is nothing less to be feared in the city of Venice than that the head of the republic will interfere with the *libertas* or activities of any of the citizens'.[88] Among Florentine theorists, Machiavelli in his *Discorsi* provided the most influential restatement of the same argument. 'It is easy to understand', as he confides at the start of Book 2, 'whence the love of living under a free constitution springs up in peoples, for experience shows that no cities have ever increased in dominion or in riches except when they have been established in liberty.'[89] The reason, he goes on, 'is easy to understand, for it is not the pursuit of individual advantage but of the common good that makes cities great, and there is no doubt that it is only under republican regimes that this ideal of the common good is followed out'.[90]

From the point of view of my present argument, two aspects of this republican tradition are of special significance. First of all, it is among these writers that we first encounter the claim that there is a distinct form of 'civil' or 'political' authority which is autonomous, which exists to regulate the public affairs of an independent community, and which brooks no rivals as a source of coercive power within its own territories. We encounter, in other words, the familiar understanding of the state as the monopolist of legitimate force. This view of civil government was

[87] This is, for example, the main thesis of Baron 1966. For a reaffirmation see Witt 1996.

[88] Contarini 1626, pp. 22, 56: 'temperandam . . . ex optimatum & populari statu . . . nihil minus urbi Venetae timendum sit, quam principem reipublicae libertati ullum unquam negocium facessere posse'. On Contarini see Pocock 1975, pp. 320–8.

[89] Machiavelli 1960, II. 2, p. 280: 'E facil cosa è conoscere donde nasca ne' popoli questa affezione del vivere libero: perché si vede per esperienza le cittadi non avere mai ampliato né di dominio né di ricchezza se non mentre sono state in libertà.'

[90] Machiavelli 1960, II. 2, p. 280: 'La ragione è facile a intendere: perché non il bene particulare ma il bene comune è quello che fa grandi le città. E sanza dubbio questo bene comune non è osservato se non nelle republiche.'

taken up in France and England at an early stage in their constitutional development. It underlies their hostility to the jurisdictional powers of the church, culminating in France in the Concordat of 1516 and in England in the Marsiglian assumptions governing the Henrician Reformation, especially the Act in restraint of Appeals in 1533. The same view underpins the repudiation by France and England of the Holy Roman Empire and its claims to exercise jurisdiction within their territories.[91] This connected attack on the ideal of universal empire had already been central to the work of such Italian jurists as Andreas de Isernia and Oldradus da Ponte in the early fourteenth century. It was their defence of the Neapolitan kingdom in its struggle for independence from the Empire that originally gave rise to the dictum, subsequently invoked in every affirmation of national sovereignty, that *Rex in regno suo est Imperator regni sui*; that all kings within their own kingdoms may be said to exercise full imperial authority. [92]

The other way in which the republican tradition contributed to crystallising an understanding of the state as an independent agency was of even greater significance. According to the writers I have been considering, no community can hope to remain in a free state unless it succeeds in imposing strict conditions on its rulers and magistrates. They must always be elected; they must always be subject to the laws and institutions of the community that elects them; and they must act to promote the common good – and hence the peace and happiness – of the citizens as a whole. As a result, the republican theorists no longer equate the idea of governmental authority with the powers of particular rulers or magistrates. Rather they think of the powers of civil government as embodied in a structure of laws and institutions which our rulers and magistrates are entrusted to administer in the name of the common good. They cease in consequence to speak of rulers 'maintaining their state' in the sense of preserving their personal ascendancy over the apparatus of government. Rather they speak of the *status* or *stato* as the name of that apparatus of government which our rulers have a duty to maintain and preserve.

There are already some hints of this momentous transition in the earliest treatises designed for city magistrates. Brunetto Latini insists in his *Trésor* of 1266 that cities must always be ruled by elected officials if the *bien commun* is to be fostered. He further insists that these *sires* must follow the laws and customs of the city in all their public acts.[93] Such a

[91] On the struggle against church and Empire as formative in the construction of modern European states see the survey in Creveld 1999, pp. 62–87.

[92] On the Neapolitan jurists see Calasso 1957, Costa 1969, Canning 1983.

[93] Latini 1948, pp. 392, 402, 408, 412, 415.

system is indispensable not only to maintaining such officials in a good *estat*, but also to maintaining 'the *estat* of the city itself'.[94] A similar hint can be found in Giovanni da Vignano's *Flore de Parlare* of the 1270s. One of Giovanni's model letters, designed for the use of ambassadors seeking military help, describes the government of such communities as their *stato*, and appeals for support 'in order that our good *stato* can remain in wealth, honour, greatness and peace'.[95] The same hint recurs soon afterwards in Matteo de' Libri's *Arringhe*, in which he sets out a similar speech for ambassadors to deliver, advising them to appeal for help 'in order that our good *stato* may be able to remain in peace'.[96]

It is only with the final flowering of Renaissance republicanism, however, that we find the terms *status* and *stato* used with full confidence to refer to an independent apparatus of government. Even at this stage, moreover, the development was largely confined to the vernacular literature. Consider, by contrast, a work such as Alamanno Rinuccini's Latin dialogue of 1479, *De Libertate*. This includes a classic restatement of the claim that individual as well as civic liberty is possible only under the laws and institutions of a republic. But Rinuccini never stoops to using the barbarous term *status* to describe the laws and institutions involved.[97] The same is true of such Venetian writers as Gasparo Contarini in his *De Republica Venetorum*. Although Contarini has a clear conception of the apparatus of government as a set of institutions independent of those who have control of them, he always speaks in a similar way of such institutions as those of the *respublica*, never those of the *status* or state.[98]

If we turn, however, to the less pure latinity of such writers as Francesco Patrizi in his *De Institutione Reipublicae*, we come upon a significant change. Patrizi lays it down that the basic obligation of magistrates is to act 'in such a way as to promote the common good', and argues that this above all requires them to uphold 'the established laws' of the community.[99] He then summarises by saying that this is how magistrates must act if they are to prevent the *status* from being overturned.[100] The vernacular

[94] See Latini 1948, p. 403 on 'l'estat de vous et de cette ville' and p. 411 on remaining 'en bon estat'.

[95] Vignano 1974, p. 247: 'che 'l nostro bom stato porà remanere in largheça, honore, grandeça e reponso'.

[96] Libri 1974, p. 12: 'ke 'l nostro bon stato potrà remanire in reposo'.

[97] Rinuccini 1957.

[98] See Contarini 1626, pp. 28 and 46, two passages where, in Lewkenor 1599, *respublica* is rendered as 'state'. On Lewkenor's translation see Fink 1962, pp. 41–2.

[99] See Patrizi 1594b, p. 281 on the duty to uphold 'veteres leges' and to act 'pro communi utilitate'.

[100] See Patrizi 1594b, pp. 279 and 292 on how to act 'ne civitatis status evertatur'.

writers of the next generation strongly consolidate this terminological shift. Francesco Guicciardini's *Discorso* on how the Medici should act to improve their grip on Florence provides a suggestive example. He advises them to gather around them a group of advisers loyal to the *stato* and willing to act on its behalf. The reasoning behind this strategy, he says, is that 'every *stato*, every sovereign power, needs dependents' who are willing 'to serve the *stato* and benefit it in everything'.[101] If the Medici base their regime on such a group, they will be able to establish 'the most powerful bulwark and basis for the defence of the *stato*' that anyone could aspire to set up.[102]

Machiavelli uses the term *stato* with still greater assurance in his *Discorsi* to denote the same kind of agency and authority. It is true that he largely continues to employ the term in traditional ways to refer to the state or condition of a city and its way of life.[103] Even when he mentions *stati* in the context of describing systems of government, his usages are still largely traditional: he is generally speaking either about a species of regime,[104] or about the general area or territory over which a prince or a republic holds sway.[105] But there are several moments, especially in the analysis of constitutions at the start of Book 1, when he appears to go further. The first is when he writes in chapter 2 about the founding of Sparta. He emphasises that the laws promulgated by Lycurgus remained distinct from, and served to control, the kings and magistrates entrusted with enforcing them, and he characterises Lycurgus's achievement in creating such a system by saying that 'he established *uno stato* which then endured for more than eight hundred years'.[106] The next instance occurs in chapter 6, where Machiavelli asks whether the institutions of government in republican Rome could have been set up in such a way as to avoid the *tumulti* that disrupted the city's political life. He puts the question in the form of asking 'whether it might have been possible to establish *uno stato* in Rome' without such an apparent weakness.[107] The last and most revealing instance occurs in chapter 18, in which he considers the difficulty of maintaining *uno stato libero* within a corrupt city. Not only does he mark an explicit distinction between the authority

[101] Guicciardini 1932, pp. 271–2: 'ogni stato ed ogni potenzia eminente ha bisogno delle dependenzie . . . che tutti servirebono a beneficio dello stato'.
[102] Guicciardini 1932, p. 273: 'uno barbacane e fondamento potentissimo a difesa dello stato'.
[103] Machiavelli 1960, I. 3, p. 135; I. 6, pp. 142–3; I. 25, p. 192; I. 26, p. 194 *et passim*.
[104] Machiavelli 1960, I. 2, pp. 130–2; I. 18, p. 182; II. 25, p. 357.
[105] Machiavelli 1960, II. 24, pp. 351–3.
[106] Machiavelli 1960, I. 2, p. 133: 'Licurgo . . . fece uno stato che durò più che ottocento anni.'
[107] Machiavelli 1960, I. 6, p. 141: 'se in Roma si poteva ordinare uno stato . . . '.

of the magistrates under the Roman republic and the authority of the laws 'by means of which, together with the magistrates, the citizens were kept under control'.[108] He also declares that the latter set of institutions and practices can best be described as 'the order of the government or, rather, of *lo stato*'.[109]

It has often been noted that, with the reception of Renaissance republicanism in northern Europe, we begin to encounter similar assumptions among Dutch and English protagonists of 'free states' in the middle of the seventeenth century.[110] It has less often been recognised that the same assumptions, couched in the same vocabulary, can already be detected more than a century earlier among the first writers to introduce some elements of classical republicanism into English political thought. Thomas Starkey, for example,[111] distinguishes at several points in his *Dialogue* between the state itself and 'they which have authority and rule of the state'.[112] The 'office and duty' of rulers, Starkey goes on, is to 'maintain the state established in the country' over which they hold sway, 'ever looking to the profit of the whole body' rather than their own good.[113] The only method, he concludes, of 'setting forward the very and true commonweal' is for everyone to recognise, rulers and ruled alike, that they are 'under the same governance and state'.[114] The same assumptions recur in John Ponet's *Shorte Treatise of Politike Power* of 1556. He too speaks of rulers as the holders of a particular office, and describes the duty attaching to their office as that of upholding the state. He is thus led to contrast the behaviour of 'an evil persone comyng to the governement of any state' with a good ruler who will recognise that he has been 'to suche office called for his vertue, to see the hole state well governed, and the people defended from injuries'.[115]

Perhaps most significantly, we encounter the same phraseology in Tudor translations of the leading Italian treatises on republican government. When Lewes Lewkenor issued his English version of Gasparo

[108] Machiavelli 1960, I. 18, p. 180: 'le leggi dipoi che con i magistrati frenavano i cittadini'.

[109] Machiavelli 1960, I. 18, p. 180: 'l'ordine del governo o vero dello stato'.

[110] Fink 1962, pp. 10–20, 56–68; Raab 1964, pp. 185–217; Pocock 1975, pp. 333–422; Haitsma Mulier 1980, pp. 26–76.

[111] I see no justification for the claim in Mayer 1985, p. 25 that Starkey merely 'dressed up' his *Dialogue* in humanist form. Cf. Skinner 1978a, pp. 213–42 for an attempt to place Starkey's ideas in a humanist context.

[112] Starkey 1948, p. 61. [113] Starkey 1948, p. 64.

[114] Starkey 1948, p. 71. For a (sceptical) discussion of the significance of these passages see Mayer 1989, pp. 124–8.

[115] [Ponet] 1556, Sig. G, 1^{v}. For the ascription to Ponet and other biographical details see Garrett 1938 and Hudson 1942, pp. 36–90.

Contarini's *De Republica Venetorum* in 1599, he found himself in need of an English term to render Contarini's basic contention that the authority of the Venetian government inheres at all times in the citizen-body of the *respublica*, with the Doge and Council merely serving as their elected representatives. Following standard humanist practice, Lewkenor generally expresses this concept by using the term 'commonwealth'. But in speaking of the relationship between the commonwealth and its own citizens, he sometimes prefers to speak of the state.When he mentions the possibility of enfranchising additional citizens, he explains that this can only happen when someone can be shown to have been especially 'dutifull towardes the state'. And when he discusses the Venetian ideal of citizenship, he feels able to allude in even broader terms to 'the citizens, by whom the state of the Cittie is maintained'.[116]

Despite the obvious importance of these theorists, it would still be misleading to conclude that their use of the term *status* and its vernacular equivalents expressed a modern understanding of the state as an authority distinct from rulers and ruled. The republican writers embrace only one half of this doubly abstract notion of public power. On the one hand, they constitute the earliest group of political writers who speak with full self-consciousness of a categorical distinction between states and governments, and at the same time express this distinction as a claim about the independent structures of *stati, états* and states. But on the other hand, they make no comparable distinction between the powers of states and the powers of the communities over which they rule. On the contrary, the whole thrust of republican theory is towards an ultimate equation between the two. This undoubtedly yields a recognisable concept of the state, one that many Marxists and exponents of direct democracy continue to espouse. But it involves a repudiation of the most distinctive element in the mainstream theory of the modern state: the claim that it is the state itself, rather than the community over which it holds sway, that constitutes the seat of sovereignty.

The explicit rejection of this further contention is an important feature of many treatises in praise of 'free states'. Consider again one of the earliest English works of this character, John Ponet's *Shorte Treatise of Politike Power*. As we have seen, Ponet makes a firm distinction between the office and person of the ruler, and even uses the term 'state' to describe the form of civil authority that our rulers have a duty to uphold. But he makes no analogous distinction between the power of the state

[116] Lewkenor 1599, pp. 18, 33.

and that of the people. Not only does he maintain that 'Kinges, Princes and governours have their autoritie of the people',[117] but he insists that the highest political power resides at all times in 'the body or state of the Realme or common wealthe'.[118]

We find the same commitment upheld even by the most sophisticated defenders of 'free states' in the seventeenth century. A good example is furnished by John Milton's *Ready and Easy Way to Establish a Free Commonwealth* of 1660. If we are to maintain 'our freedom and flourishing condition', Milton argues, and establish a government 'for preservation of the common peace and libertie', it is essential that the people's sovereignty must never be 'transferrd'. It must be 'delegated only, and as it were deposited' with a governing Council of State.[119] The ruling institutions of the state are thus conceived as nothing more than a means of expressing the powers of the people in an administratively more convenient guise. As Milton had earlier emphasised in *The Tenure of Kings and Magistrates* in 1649, whatever authority our rulers may possess is merely 'committed to them in trust from the People, to the Common good of them all, in whom the power yet remaines fundamentally' at all times.[120]

v

I turn to the second and overlapping tradition of constitutionalism that needs to be investigated. As I have already noted, the writers we next need to consider are the so-called monarchomachs or king-killers, a term of abuse first employed by William Barclay in his *De Regno* of 1600.[121] The monarchomachs rose to sudden prominence in the latter part of the sixteenth century in the course of the religious wars in France and the Low Countries,[122] although the intellectual roots of their constitutionalism lay deep in the legal and scholastic theory of corporations, as we saw in chapter 9. Few of the monarchomachs were republicans in the strict sense of believing that self-rule is a necessary condition of public and private liberty. They were generally content to assume that the right to exercise sovereignty will be vested in a monarchical form of government, although they almost always spoke of the need to ensure that such monarchs are elected. Writing in a more religious idiom, they

[117] [Ponet] 1556, Sig. G, 5^{v}–6^{r}. [118] [Ponet] 1556, Sig. G, 5^{r}.
[119] Milton 1980, pp. 432–3, 456. [120] Milton 1991, p. 10. [121] See Barclay 1600.
[122] For the Dutch theorists see Gelderen 1992, pp. 110–65; for the French see Skinner 1978b, pp. 302–48.

were chiefly concerned to vindicate the rights of peoples, especially under conditions of sectarian oppression, to resist and remove even lawfully constituted rulers if they could be shown to be governing tyrannically. From the point of view of my present argument, however, the significance of these writers derives from the fact that some of them eventually felt driven to defend their co-religionists by way of espousing a theory of popular sovereignty.[123]

The French Calvinists increasingly edged towards this position in the 1570s, especially after the Catholic government under Catherine de' Medici allegedly ordered the massacre of St Bartholomew's Day in 1572, in which over two thousand Calvinists were murdered in Paris and perhaps as many as ten thousand more in the provinces.[124] The great summarising document of the ensuing protest movement was the *Vindiciae, Contra Tyrannos*, almost certainly written by Hubert Languet and Philippe du Plessis Mornay.[125] The text was drafted in 1574 immediately after the publication of several other leading Huguenot treatises, including the anonymous *Reveille-matin des François* and François Hotman's *Francogallia*.[126] It was subsequently revised and extended to take account of changing political circumstances and eventually appeared in 1579.[127]

Within a few years, the continuing effort in the Low Countries to throw off the rule of Spain gave rise to a number of comparable treatises. Perhaps the most important was Johannes Althusius's *Politica Methodice Digesta*, in which the authority of the *Vindiciae* is invoked at numerous points.[128] Althusius's massive treatise was first published in 1603 when he was teaching law at the Academy of Herborn, founded by Count John of Nassau, and was subsequently reissued in a more extended version in 1610 and again in 1614.[129] Meanwhile a similar form of constitutionalism had been espoused by Catholic writers in England as well as France. After Henry of Navarre, an avowed Huguenot, became heir to the French throne in 1584, a number of monarchomach treatises began to appear

[123] My analysis of this movement in Skinner 1978b, pp. 239–75, 302–48 has been criticised in Kossmann 1981 and Eire 1986 for allegedly exaggerating the extent to which it was based on a theory of popular sovereignty. But it can hardly be denied that the movement *included* such theories, and it is with these that I am solely concerned in my present argument.

[124] Skinner 1978b, p. 242.

[125] On the authorship of the *Vindiciae* see Garnett 1994, pp. lv–lxxvi. For a fuller analysis of its argument see Skinner 1978b, pp. 315–18, 329–43 and Garnett 1994, pp. xix–liv.

[126] Garnett 1994, pp. lxviii–lxix, lxxv.

[127] On these revisions see Garnett 1994, pp. lxviii, lxxv.

[128] Althusius 1932, pp. 146, 157, 184, 261, 382, 388, 391 *et passim*.

[129] Carney 1965, pp. xiv–xvi. On Althusius as a theorist of popular sovereignty see Tierney 1982, pp. 71–9.

in defence of the Catholic cause, the most violent being Jean Boucher's *De Iusta Henricii Tertii Abdicatione* of 1589, in which large sections were lifted directly out of the *Vindiciae*.[130] After the defeat of the Spanish Armada in 1588 a similar movement of Catholic protest began to gather momentum in England, with the Jesuit Robert Persons issuing the most inflammatory of the resulting monarchomach tracts in the form of his *Conference about the Next Succession to the Crowne of Ingland* in 1594.[131]

The founding principle of politics according to all these writers is that everyone is by nature free of subjection to government. It is not only manifest, the *Vindiciae* proclaims, that 'a people can exist of itself, and is prior in time to a king' but that 'men are free by nature, impatient of servitude, and are born more to command than to obey'.[132] If we find such peoples living as subjects of government, this can only be because they must at some stage have decided to accept this form of subjection and must have freely consented to its terms. The exemplary instance is that of the people of ancient Israel, who covenanted with God and with their kings to establish a righteous commonwealth. From this we can infer, the *Vindiciae* declares, 'that the people constitutes kings, confers kingdoms, and approves the election by its vote'.[133]

These writers further insist that, because every individual member of the populace originally lived in freedom, we cannot imagine them entering into a contract with their rulers by which they relinquish their original powers of self-government. To hand over their rights unconditionally, in effect selling themselves into slavery, would not only be a manifest irrationality but inconsistent with the laws of nature. From the fact of the original freedom of the people the monarchomachs accordingly infer that the contract of government must always have the effect of imposing terms and conditions on the exercise of public power. As the *Vindiciae* puts it, the anointment of David serves in particular to remind our rulers that, although they are confirmed in their office by God, it is 'by the people and for the people that they rule'. Not only are they 'constituted by the people' but their authority is 'conferred by the people', who retain the right to resist and remove them if they govern tyrannically.[134]

We next need to highlight a crucial presupposition of this view of the political covenant. If a multitude of individuals or families in a pre-political condition possesses the ability to covenant with a chosen ruler,

[130] Garnett 1994, p. xx.

[131] The tract appeared under the pseudonym 'R. Doleman'. On Robert Persons and his authorship of the *Conference* see Holmes 1982, pp. 130–4, 147–65, 214–20.

[132] *Vindiciae* 1994, pp. 71, 92. [133] *Vindiciae* 1994, p. 68. [134] *Vindiciae* 1994, pp. 69, 70, 71, 74.

this can only be because they have the capacity to exercise a single will and make decisions with a single voice. The usual way of expressing this assumption was to say that such a *populus* can be regarded as 'one', as a union or unified form of society. Sometimes the argument was couched more specifically in the form of the claim – adapted from the Roman law theory of corporations – that such a *populus* can be described as an *universitas*.[135] This is the term invariably employed in the *Vindiciae*, and later in Althusius's *Politica*, to express the idea that, as the *Vindiciae* repeatedly asserts, any body of people must be capable of acting 'all together as a whole' in setting the terms of its subjection to government.[136]

If a *populus* can be considered as one, and hence as capable of speaking with a single voice, we can equally well describe it according to these writers as bearing the character of a single person. Bartolus, Baldus and their followers had already arrived at this conclusion two centuries earlier. They had begun by arguing that a *populus* can be viewed as a corporation, and hence as a distinct legal entity. This had led them to suggest that, if a body of people can in this way be distinguished from the individuals who compose it, the body must amount legally speaking to *una persona*. It must possess a capacity to act through the agency of its members, who must in turn possess an ability to express not merely their own wills but the will of the *persona* of the *populus* as a whole.[137]

This use of the term *persona* derives from a number of classical usages that Thomas Hobbes was later to examine with exceptional acuity in *Leviathan*. Hobbes presents his analysis in chapter 16, *Of Persons, Authors, and things Personated*, a discussion without parallel in any of the earlier recensions of his civil science. That Hobbes considered this chapter to be of special significance is signalled by the pivotal place he assigns to it in his general argument. He makes it the closing chapter of Part 1, using it at once to round off his account of the world of natural persons and to pave the way for his exploration of the artificial world of politics in Part 2.

Hobbes begins by pointing out that the word *persona* started life as a piece of theatrical terminology, signifying 'the *disguise*, or *outward*

[135] On the evolving uses of the term *universitas* see Michaud-Quantin 1970, pp. 11–44; on the *universitas* and the *stato* or state, see Canning 1983; Black 1992; Najemy 1994b.

[136] See *Vindiciae* 1579, p. 13 for its first use of the term *populus universus* and cf. *Vindiciae* 1994, p. 22. See also *Vindiciae* 1579, pp. 51, 65 on the *populus* as an *universitas* and cf. *Vindiciae* 1994, pp. 50, 59.

[137] Garnett in his edition of the *Vindiciae* valuably singles out the passages in the *Digest* that were made to bear this interpretation by Bartolus, Baldus and their monarchomach followers. See *Vindiciae* 1994, p. 38 n.17; p. 47 n. 73; p. 59 n. 148; p. 90 n. 153. For the views of the post-glossators see Michaud-Quantin 1970; Canning 1980; Canning 1987, pp. 185–97.

appearance of a man, counterfeited on the Stage; and sometimes more particularly that part of it, which disguiseth the face'.[138] From being used to denote a mask, the term came to be applied more generally to refer to the *dramatis personae* in a play, in which usage 'a *Person*, is the same that an *Actor* is, both on the Stage and in common Conversation'.[139] Finally, by an obvious metaphorical extension, the term came to be used to describe the different offices and duties discharged by individual citizens in public life, a usage in which Hobbes is particularly interested:

> To *Personate*, is to *Act*, or *Represent* himselfe, or an other; and he that acteth another, is said to beare his Person, or act in his name; (in which sense *Cicero* useth it where he saies, *Unus sustineo tres Personas; Mei, Adversarii, & Iudicis*, I beare three Persons; my own, my Adversaries, and the Judges).[140]

As Hobbes was well aware, Cicero had been especially fond of using *persona* in this final sense. One illuminating example occurs in Book 3 of *De Officiis*, in which he considers the predicament of a judge who finds himself trying a case in which one of his friends is involved. He must be careful, Cicero warns, not to do anything contrary to the interests of the *respublica*, remembering that 'when he takes upon himself the *persona* of a judge, he lays aside the *persona* of a friend'.[141]

It was due to a further metaphorical extension of these usages that the term *persona* eventually acquired its juristic meaning, and it is this meaning that we encounter in the writings of the monarchomachs. The *Vindiciae* draws explicitly on Bartolus's account of legal *personae* in the course of describing the exemplary covenant between God and the chosen people of Israel. The people were able to make such a pledge because 'an *universitas* of men sustains the role of, and acts in the manner of, a single person'.[142] Althusius likewise describes the *populus* in the Preface to his *Politica* as a single body or unified group, and hence as having one character.[143] He later cites a number of authorities who claim that, when

[138] Hobbes 1996, ch. 16, p. 112. [139] Hobbes 1996, ch. 16, p. 112.

[140] Hobbes 1996, ch. 16, p. 112, quoting (slightly inaccurately) Cicero 1942a, II. XXIV. 102, vol. 1, p. 274. Hobbes had already made the distinction between acting *ex propria persona* and *in persona non sua* in his *Critique* of Thomas White. For the date of this manuscript (1642–3) see Jacquot and Jones 1973, pp. 43–5; for the relevant passage see BN Fonds Latin MS 6566A, fo. 6^{v} and cf. Hobbes 1973, p. 107.

[141] Cicero 1913, III. X. 43, p. 310: 'ponit enim personam amici, cum induit iudicis'. Cf. Cicero 1913, I. XXX. 107, p. 108 and I. XXXII. 115, pp. 116–18.

[142] *Vindiciae* 1579, p. 37: 'universitas enim hominum unius personae vicem sustinet'. Cf. *Vindiciae* 1994, p. 38. (But I have supplied my own translation, highlighting the theatrical metaphor.)

[143] See Althusius 1932, p. 5 on the *populus universus* and its proprietorship of *maiestas*. Cf. Gierke 1957, pp. 250, 255, 256–7.

such a group lives together under settled laws, this type of *universitas* can be described both as a *civitas* and as a *persona*.[144] His chapter on the powers of magistrates adds that we may say 'of such administrators and rectors, who have been appointed by the body of the people, that they serve as representatives who act the part of the *persona* constituted by the people as a whole'.[145]

The same vocabulary recurs even more prominently among Althusius's immediate successors, notably in Johann Werdenhagen's *Politica Generalis* of 1632, a work published in Amsterdam while Werdenhagen was teaching at the University of Leiden.[146] Werdenhagen devotes Book 2 chapter 6 to furnishing an exceptionally full anatomy of the various 'modes' in which the term *persona* can be used.[147] After discussing the vexed question of the *tres personae* of the Holy Trinity, he notes that, in the sixth mode of its use, the term *persona* 'can be applied not merely to an individual human being but also to the whole body of the people'.[148] This leads him to isolate, as its seventh mode, a distinctive legal usage according to which 'an *universitas* can be considered in law just as if it is a single *persona*'.[149]

This image of the populace as a *persona*, and hence as capable of consenting to the terms of its own government, was used by the monarchomachs to introduce a general account of the powers required to sustain kingdoms and commonwealths. They treat the founding covenant – the *foedus* or *pactum* – as the source of a structure of public institutions that evolve and solidify over time.[150] This structure is said to include a *dominium publicum* or public domain, which needs to be sufficiently large to defray the costs of government and above all of defence. As the *Vindiciae* explains, alluding to Tacitus, 'peace cannot be sustained without war, nor war without soldiers, nor soldiers without pay, nor pay without tribute', so that a public domain had to be instituted 'in order to support the burdens of peace'.[151] A further element in the same structure is said to be the judicial system of courts and their functionaries, a system

[144] Althusius 1932, ch. 5, p. 39.
[145] Althusius 1932, ch. 18, p. 140: 'administratores & rectores, universalis consociationis, seu totum & universum populum, a quo constituti sunt, repraesentant . . . eiusque personam gerunt'.
[146] Voigt 1965, pp. 7, 10.
[147] Werdenhagen 1632, II. 6, p. 123: 'De distinctione Populi & Societate ac Personis istius in genera.'
[148] Werdenhagen 1632, II. VI. 23, p. 131: 'Non tantum uni homini, sed etiam toti populi applicatur.'
[149] Werdenhagen 1632, II. VI. 23, p. 132: 'In Iure tota Universitas tanquam Una persona consideretur.' Cf. Gierke 1957, pp. 245, 252.
[150] The *Vindiciae* generally speaks of the *foedus*, but sometimes of the *pactum* and sometimes even of the *contractus*. See, for example, *Vindiciae* 1579, pp. 159, 168 and cf. *Vindiciae* 1994, pp. 129, 138.
[151] *Vindiciae* 1994, p. 115. Cf. *Vindiciae* 1994, pp. 89–90, 113 and Tacitus 1931, LXXIV, p. 146.

indispensably required, as the *Vindiciae* adds, if justice is to be impartially administered and if the laws are to 'speak with one and the same voice to all'.[152]

Reflecting on these institutions, the monarchomachs invariably insist, no less than the classical republicans had done, on a strong distinction between the office and the person of any ruler or functionary entrusted with administering them. No ruler can count as the proprietor or even the usufructuary of the public patrimony. As the *Vindiciae* puts it, 'a true king is a curator of public affairs', so that 'he can no more alienate or squander the royal domain than the kingdom itself'.[153] Nor can a ruler be regarded as standing above the laws, since the basic duty of his office is to enforce whatever laws the people may have agreed to be necessary for the assurance of their own welfare and benefit. As the *Vindiciae* explains, any king is merely 'a minister and executor of the law', who 'receives from the people the laws which he is to protect and observe'.[154]

When writing in Latin, these theorists normally describe this permanent structure of institutions as the structure of the *regnum*, the kingdom or commonwealth.[155] When writing in the vernacular, however, they sometimes echo the language of the classical republicans and speak of the structure in question as that of the state. Robert Persons uses the term in his chapter outlining the French and English laws of succession in his *Conference* of 1594. His chapter heading states that, when we survey the history of these laws, we are surveying the practice 'of the States of France and England'.[156] To which he adds that, when we examine particular cases, we are speaking of decisions made by 'the whole state'.[157] The same usage recurs among the supporters of Parliament at the outbreak of the English civil war. When Henry Parker, for example, addressed his *Observations* to Charles I in 1642,[158] he justified the Long Parliament's arrogation of sovereignty on the grounds that 'the State hath an Interest Paramount in cases of publique extremity',[159] and that in England the Parliament is given ultimate charge of 'matters of Law and State'.[160]

Some scholars have inferred that it is within this tradition of thought that we first encounter a clear understanding of the state as an apparatus of government distinct from both rulers and ruled.[161] Some have gone

[152] *Vindiciae* 1994, pp. 96, 97–9. [153] *Vindiciae* 1994, p. 119.
[154] *Vindiciae* 1994, pp. 74, 96, 99, 104. [155] *Vindiciae* 1579, p. 83; cf. *Vindiciae* 1994, p. 76.
[156] [Persons] 1594, p. 164. It is possible, however, that by 'states' in this instance Persons means the Estates or Parliament.
[157] [Persons] 1594, p. 168.
[158] On Parker as author of the *Observations* see Mendle 1995, pp. 82–5, 192.
[159] [Parker] 1933, p. 199. [160] [Parker] 1933, p. 202. [161] For example Lloyd 1983, p. 155.

even further, arguing that such an understanding can already be found in the Bartolist theory of corporations from which the monarchomachs drew so much of their intellectual strength.[162] There is certainly something to be said in favour of these arguments. It is true that, like the classical republicans, the monarchomachs separate the office and the person of the prince in such a way as to distinguish those who possess authority over the institutions of a community from those institutions themselves. It is also true that, even more clearly than the republicans, the monarchomachs and their legal authorities think of sovereignty as the property of a legal person, thereby distinguishing it from the powers of any natural persons who may be assigned the right to exercise it at any given time.

Although they separate sovereignty from sovereigns, however, the monarchomachs make no comparable distinction between the powers of sovereignty and the powers of the people. Like the classical republicans, they embrace only one half of the doubly abstract notion of state authority. While they stress that sovereignty is the property of a legal person, the person whom they treat as the bearer of sovereignty is always the *persona* constituted by the corporate body of the people, never the impersonal body of the *civitas* or *respublica* itself. We find this commitment underlined with particular clarity in the *Vindiciae*. There we are repeatedly told that, although our rulers are undoubtedly *maior singulis,* greater in power than any individual members of the populace, they remain *minor universis*, lesser in power than the populace as a whole.[163] The body of the people remains at all times the possessor of 'supreme lordship', and thus remains 'the lord of the commonwealth'.[164] Neither in the *Vindiciae* nor even in later monarchomach treatises such as Althusius's *Politica* do we find any distinction drawn between the powers of the people as an *universitas* and the powers of the *civitas* itself. The aim is always to insist, no less firmly than the defenders of 'free states', on an ultimate equation between the two.

VI

If we wish to witness the moment at which the powers of the state were finally described as such, and were distinguished not merely from the powers of rulers but from those of the community, we need to direct our

[162] Calasso 1957, pp. 83–123; Wahl 1977; Canning 1983, pp. 23–7; Najemy 1994b.
[163] *Vindiciae* 1579, pp. 89, 193; cf. *Vindiciae* 1994, pp. 78, 156.
[164] *Vindiciae* 1994, pp. 75, 77, 165.

attention away from the constitutional theorists on whom I have so far concentrated. We need to turn instead to a strongly contrasting group of legal and political philosophers who made it their business to address themselves critically to the thesis of popular sovereignty, whether in its republican guise as a claim about 'free states' or in its legal and neo-scholastic form as a claim about the inalienable rights of communities. We need to turn, that is, to those theorists whose aspirations included a desire to legitimise the more absolutist forms of government that began to prevail in western Europe in the early part of the seventeenth century.[165] It was as a by-product of their arguments, and in particular of their efforts to insist that the powers of government must be something other than the powers of the governed under another guise, that the concept of the state as a distinct person and as the seat of sovereignty was finally articulated with full self-consciousness.[166]

Some of these theorists saw themselves chiefly as enemies of the republican vision of free states. This is true to some degree of Thomas Hobbes, who sharply retracts in *Leviathan* the admiration he had expressed in his earlier *Elements of Law* for classical theories of freedom and citizenship. In *The Elements* he had allowed that Aristotle 'saith well' that 'noe man can partake of Liberty, but onely in a Popular Common wealth'.[167] But in *Leviathan* he mounts a furious attack on Aristotle, and even more on Cicero and his followers, for equating monarchy with tyranny. As we saw in chapter 12, he came to believe that the willingness of schools and universities to inculcate this calumny had been the cause of ruinous conflicts throughout the commonwealths of western Europe.

To most of these writers, however, it was the monarchomachs who seemed to pose the gravest and most immediate threat. This is what we learn from Jean Bodin in his *Six livres de la république*, first published in 1576 and translated into English as early as 1606.[168] Bodin tells us that he felt

[165] For a similar perspective see Black 1992. For a critique see Najemy 1994b. Note that, in what follows, I see no need (by contrast with the implications of Burgess 1996) to avoid the term 'absolutist' when discussing these writers, provided that it is not taken to mean anything like 'unbridled'. They frequently employed the term themselves when referring to their theory of sovereignty. See for example Bodin 1962, p. 84; Blackwood 1588, p. 89; Hobbes 1996, ch. 21, p. 143; ch. 29, pp. 222–3; ch. 42, p. 379.

[166] On this juristic understanding of the state as a distinct moral person see Dyson 1980, pp. 14–15, 218–20 and Runciman 1997.

[167] Hobbes 1969b, p. 170. As I noted in chapter 10, although Hobbes 1969b remains the standard edition, it contains an unacceptable number of transcription mistakes. I have therefore preferred to quote from BL Harl. MS 4235, arguably the best surviving manuscript, although my page references are to the 1969 edition.

[168] This translation (by Richard Knolles) is the version from which I quote.

moved to write 'when I perceived on every side that subjects were arming themselves against their princes' and that 'books were being brought out openly' which taught that 'princes sent by providence to the human race must be thrust out of their kingdoms under a pretense of tyranny, and that kings must be chosen not by their lineage, but by the will of the people'.[169] One of his chief aspirations, he explains, is to refute the widespread but treacherous opinion 'that the power of the people is greater than the prince', this being 'a thing which oft times causeth the true subjects to revolt from the obedience which they owe unto their soveraigne prince, & ministreth matter of great troubles in Commonweals'.[170]

A yet more direct attack on the monarchomachs was mounted soon afterwards by the so-called Pont-à-Mousson writers on sovereignty, among whom the leaders were Adam Blackwood and William Barclay, two Scotsmen teaching civil law in France.[171] Blackwood first trained at Toulouse, after which he taught at Paris,[172] while Barclay taught first at Bourges and later at Pont-à-Mousson.[173] There he became a colleague of Pierre Gregoire, the author of another important anti-monarchomach treatise on sovereignty, the *De Republica* of 1596.[174] Barclay and Blackwood were greatly exercised by the deposition of Mary Queen of Scots, an act confirmed by the Scottish Parliament in 1567. As we saw in chapter 9, George Buchanan had defended these proceedings in one of the most radical of all the monarchomach tracts, his *De Iure Regni apud Scotos* of 1579.[175] Adam Blackwood replied in a treatise entitled *Adversus Georgii Buchanani . . . pro regibus Apologia*, which first appeared at Paris in 1581 and was reissued in a revised and extended form in 1588.[176] William Barclay also replied to Buchanan (much less respectfully) in his *De Regno* of 1600, an immense tome in which the term 'monarchomach' was originally coined, and which subsequently caused its author to be singled out by John Locke in his *Two Treatises* as 'the great Champion of Absolute Monarchy'.[177] As Barclay's full title resoundingly proclaims, his championing was directed not merely against George Buchanan, but against the

[169] Bodin 1962, pp. A71–2.
[170] Bodin 1962, p. 95; cf. p. 224. On Bodin's *Six livres* as an ideological reaction to the menace of Huguenot constitutionalism see Franklin 1973; Salmon 1973; and Skinner 1978b, pp. 284–301.
[171] On this school of thought see Collot 1965 and Salmon 1991, esp. pp. 233–6.
[172] Church 1941, pp. 245–6. [173] Gierke 1957, pp. 401–2.
[174] On Gregoire see Church 1941, pp. 245–6, 247–9; on Gregoire and Barclay see Collot 1965.
[175] See Burns 1996, pp. 185–209 for Buchanan's defence and p. 191n. for references to earlier discussions of his work.
[176] Church 1941, p. 245 and note. [177] Locke 1988, II. 239, p. 424.

author of the *Vindiciae*, against Boucher's *De Iusta Abdicatione* and against 'all the other monarchomachs'.[178]

A similar defence of monarchy began to gather strength in England in the early years of the seventeenth century. Sir John Hayward published his *Answer* to Robert Persons's *Conference* in 1603,[179] and similar treatises by other civil lawyers punctuated the ensuing decades, one of the most important being Calybute Downing's *Discourse* of 1633 on civil and ecclesiastical power.[180] With the outbreak of civil war in 1642 it became a matter of still greater urgency to answer the monarchomach case, and a number of tracts in defence of monarchical power duly began to appear. One of the most searching was Dudley Digges's *The Unlawfulnesse of Subjects taking up Armes*, which was published anonymously in 1643. Digges stigmatises as 'evidently false' the claim that rulers are *universis minor*,[181] a doctrine he associates above all with Buchanan, Hotman, the author of the *Vindiciae* and their English counterparts such as Henry Parker and other supporters of the parliamentary cause.[182] But by far the most important writer to come forward at this critical juncture as a theorist of royalism was Thomas Hobbes, first in *The Elements of Law* in 1640 and then in *De Cive* in 1642. Hobbes is no less anxious than Bodin to warn his fellow-citizens that – as he later puts it in *Leviathan* in words closely echoing the *Six livres* – although the condition of political subjection may appear miserable, the greatest misery that can possibly befall us as subjects 'is scarce sensible, in respect of the miseries, and horrible calamities, that accompany a Civill Warre'.[183]

Although these writers are fervent believers in monarchy, none of them takes the shortest way with the monarchomachs by arguing that our rulers are simply the direct gifts of God.[184] They all agree that the people must originally have been free of government. They accept in consequence that every form of legitimate government must arise out of some kind of contract or covenant. As a result, they all insist that legitimate rulers must be regarded as public persons with a duty to act in

[178] See Barclay 1600. [179] On Hayward as a civil lawyer see Levack 1973, pp. 237–8.

[180] On Downing as a civil lawyer see Levack 1973, p. 225. For his 'absolutist' views see Sommerville 1999, pp. 40, 67. Downing's treatise was reissued in 1634, and it is from that edition that I quote.

[181] [Digges] 1643, p. 33.

[182] [Digges] 1643, p. 58 names these and other monarchomachs and at pp. 62–4 replies specifically to Henry Parker.

[183] Hobbes 1996, ch. 18, p. 128.

[184] Here I correct the misleading account of Barclay and Blackwood given in Skinner 1978b, p. 301.

such a way as to procure the safety and benefit of those over whom they rule. What none of them can tolerate, however, is the further suggestion that the covenant underpinning the authority of our governors has the effect of imposing terms and conditions on the exercise of government. For the anti-monarchomach writers, the crucial polemical task is to show that this alleged inference can somehow be denied.

How, then, do they deny it? The writers I am considering may be said to explore two contrasting possibilities. Some respond by challenging the monarchomach contention that no free people would ever agree to a covenant obliging them to relinquish their original powers and rights. This, for example, is the principal line of attack pursued by William Barclay in his *De Regno* of 1600. Barclay agrees that it is appropriate to think of the people as originally free of government.[185] He further agrees that we can think of them as an *universitas* capable of choosing their rulers and covenanting to establish the terms of their rule.[186] But he sees no reason to infer that the resulting covenant need necessarily embody any limitations on the exercise of public authority. As he points out, we are unambiguously told in the *Digest* that, in the exemplary instance of the Roman people, the terms of the *Lex regia* were such that the populace agreed to the conferment, and hence the total relinquishment, of all their original *imperium* and *ius*. The inference Barclay draws is that the bearer of ultimate sovereignty in any kingdom or commonwealth must therefore be the *publica persona* of the *princeps* himself.[187]

By contrast with this orthodox retort, a number of absolutists made a different and crucial move, a move that eventually led them to embrace the idea of the sovereignty of the state. Rather than questioning the nature of the covenant negotiated by the *persona* of the people, they questioned the underlying image of the populace as a single *persona* capable of negotiating the terms of a covenant. Rather, we find them arguing, it is only as a result of submitting to government that an aggregate of individuals ever becomes converted into a unified body of people. Jean Bodin in his *Six livres* lays out exactly this argument in the course of making his fundamental distinction between the government of families and of *républiques*. It is only the acceptance of 'soveraintie of power', he maintains, 'which uniteth in one body all the members and families'

[185] Barclay 1600, III. II, pp. 110–11.
[186] Barclay 1600, III. IV, p. 124 on the act being 'de ipso populo universo'.
[187] Barclay 1600, III. II, pp. 112–13; III. III, pp. 115–16; III. IV, pp. 123–31. Blackwood also has recourse to this argument. See Blackwood 1588, ch. 8 (*recte* 9), pp. 80–5 and ch. 9 (*recte* 10), pp. 89–98.

of a *civitas* or *république*.[188] It is an error to suppose that the people owe their unity to the fact of living together as members of a single society or as denizens of a single place. 'For it is neither the wals, neither the persons, that maketh the city, but the union of the people under the same soveraigntie of government.'[189] In the absence of such a union 'the same is no more a commonweale, neither can by any means long endure'.[190]

Bodin later underlines his argument in the course of analysing the concept of citizenship. We can only speak of citizens and recognise that they have 'made a Commonweale' when we find a group of people 'governed by the puissant soveraigntie of one or many rulers'.[191] This is because, he insists once more, 'the enclosure of wals make not a citie, (as many have written) no more than the wals of a house make a familie'. What alone creates 'one very citie' out of a multitude of individuals is the acceptance of their common subjection 'unto the command of their soveraigne lords, and unto their edicts and ordinances'.[192]

Thomas Hobbes refers admiringly to Bodin in discussing the concept of sovereignty in *The Elements of Law*,[193] and goes on to elaborate a strikingly similar analysis of the act of covenanting in *Leviathan*. As he argues in chapter 17, there is only one way in which a multitude can attain unity, and hence act in the manner of a single person. This is by agreeing, each with each, 'to conferre all their power and strength upon one Man, or upon one Assembly of Men, that may reduce all their Wills, by plurality of voices, unto one Will'.[194] It is only by this means that they can hope to transform themselves from a multitude with many conflicting wills into '*One Person*', thereby attaining 'a reall Unitie of them all, in one and the same Person, made by covenant of every man with every man'.[195] The error of the monarchomachs, in short, is to suppose that the covenant tells us the terms of our subjection; it merely tells us the name of the man or assembly to whom we have agreed to subject ourselves.

Hobbes further corroborates his argument in the closing chapters of Part 2 of *Leviathan*. If the essential rights of sovereignty are taken away, 'the Commonwealth is thereby dissolved, and every man returned into the condition, and calamity of a warre with every other man'.[196] Without a sovereign, the people are so far from being an *universitas* that they amount to nothing at all. 'A Common-wealth, without Soveraign Power, is but a word, without substance, and cannot stand.'[197] This is

[188] Bodin 1962, p. 9. [189] Bodin 1962, p. 10. [190] Bodin 1962, p. 10.
[191] Bodin 1962, p. 49. [192] Bodin 1962, pp. 49–50, 51. [193] Hobbes 1969b, pp. 172–3.
[194] Hobbes 1996, ch. 17, p. 120. [195] Hobbes 1996, ch. 17, p. 120.
[196] Hobbes 1996, ch. 30, p. 231. [197] Hobbes 1996, ch. 31, p. 245.

because, as Hobbes has already explained in chapter 16, 'it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*', and '*Unity* cannot otherwise be understood in Multitude'.[198]

Some time before Hobbes gave final shape to these thoughts in *Leviathan*, Dudley Digges had already developed a similar line of attack on the monarchomachs in his *Unlawfulnesse of Subjects taking up Armes.* He too begins by maintaining that the only way in which a multitude can 'reduce themselves into a civill unitie', and thereby act in the manner of a single person, is 'by placing over them one head, and making his will the will of them all'.[199] He goes on to explain that 'this submission of all to the will of one; or this union of them agreed upon, is to be understood in a politique sense'.[200] It is only by creating a political union under a sovereign that a people ceases to be a mere multitude. 'The sinews of government, by which they were compacted into one' is what converts them from a warring collection of individuals into a well-ordered people.[201] 'For government is an effect not of a peoples divided naturall powers, but as they are united and made one by civill constitution.'[202]

The thesis advanced by all these writers is thus that the act of submitting to a sovereign is what converts us from a multitude into a union, and thus into one person. What, then, is the name of this person? Jean Bodin's answer is that, whenever we engender a 'union of the people' by way of accepting a sovereign, the name of the person we create is the *état* or state. Bodin gestures at this final crystallising of the concept at several points in his *Six livres*, as does Adam Blackwood in his *Apologia* and Pierre Gregoire in his *De Republica*.[203] Blackwood still prefers to speak of the *respublica* rather than the *status*, responding to George Buchanan's contention that any *populus* remains *maior* than its king by arguing that 'the king alone takes upon himself the *persona* of the *respublica* as a whole'.[204] But in Bodin we already find the word *estat* used on several occasions

[198] Hobbes 1996, ch. 16, p. 114. [199] [Digges] 1643, p. 4. [200] [Digges] 1643, p. 4.
[201] [Digges] 1643, p. 7. [202] [Digges] 1643, p. 7.
[203] Lloyd 1983, pp. 156–62. Fell 1983, pp. 92–107, 175–205 lays all his emphasis on Bodin's contemporary Corasius, although without investigating the extent to which he uses the term *status* to express his concept of 'the legislative state'. By the next generation the use of the vernacular term *état* (or *estat*) to express such a concept had become well established in France. See Church 1972, pp. 13–80; Keohane 1980, pp. 54–82, 119–82. Dowdall 1923, p. 118 singled out the contribution of Charles Loyseau's *Traité des seigneuries* (1608), which has subsequently been much discussed. See Church 1972, pp. 33–4; Basdevant-Guademet 1977; Lloyd 1981; Lloyd 1983, pp. 162–8; Lloyd 1994, pp. xi–xxv.
[204] Blackwood 1588, ch. 32, p. 281: '[rex] solus reipublicae personam agit'. He later adds (ch. 33, p. 296) that, within a *respublica*, 'the people undoubtedly resembles a body while the king resembles its soul' – 'Populus certe corpori similis est, rex animo.'

as a synonym for *républiqu*e, while Pierre Gregoire uses the Latin word *status* in a similar way. Gregoire is quite explicit that, when a people takes on a unified character under the sovereignty of a ruler, the name of the resulting union is '*una Respublica seu status*'.[205] Still more significantly, Bodin feels able to speak in his *Six livres* of *l'estat en soi*, 'the state in itself', and to describe it both as a form of authority independent of particular types of government and as the seat of 'indivisible and incommunicable sovereignty'.[206] It is notable, moreover, that when Richard Knolles came to translate these passages in 1606, he not only used the word *state* in all these instances, but also in a number of passages in which Bodin had continued to speak in more traditional style about the *cité* or *république*.[207]

Calybute Downing in his *Discourse* of 1633, as well as Sir John Hayward in his earlier *Answer* to Robert Persons, both appear to gesture towards the same conclusion, although the direction of their thinking is admittedly far from clear. Downing argues that 'distinct and settled societies' can only hope to flourish in peace 'where a State is so framed that they are all united in one head'.[208] Hayward likewise maintains that the creation of an effective structure of government and obedience requires 'union of the authoritie which doth command'.[209] This union, he goes on, is founded on communal amity, 'which is the onely bande of this collective body', and arises 'when many doe knit in one power and will'.[210] Later he suggests that the union created by this amity can best be described as that of the state. Sovereigns are assigned their authority to 'execute this high power of state'[211] and are presented to the people by 'the lawes of the State'.[212]

By contrast with these stumbling observations, Dudley Digges speaks without hesitation of the state as the name of the institution we create by the act of submitting to government. He first does so in the course of defending the claim that the state 'hath full power to restraine the license of resisting, for the preservation of order and publique tranquillity':

[205] Bodin 1576, pp. 219, 438. Cf. Gregoire 1596, i. 2, p. 12: '*De origine & progressu societatis, coniunctionis & coitionis populi in unam Rempublicam, seu statum communem.*'

[206] Bodin 1576, pp. 282–3: 'Et combien que le gouvernement d'une Republique soit plus ou moins populaire, ou Aristocratique, ou Royale, si est-que l'estat en soi ne reçoit compairison de plus ni de moins: car toujours la souverainté indivisible et incommunicable est à un seul.' Cf. Bodin 1576, pp. 281 and 414 for the phrase 'en matière d'estat'. Hobbes 1996, ch. 18, p. 127 similarly speaks of the 'incommunicable, and inseparable' powers of sovereigns.

[207] Bodin 1962, pp. 184, 250, 451; cf. also Bodin 1962, pp. 10, 38, 409, 700 for additional uses of 'state'.

[208] [Downing] 1634, p. 46.

[209] [Hayward] 1603, Sig. B, 3^{v}.

[210] [Hayward] 1603, Sig. B, 4^{r}.

[211] [Hayward] 1603, Sig. L, 1^{v}.

[212] [Hayward] 1603, Sig. T, 3^{v}.

That it should lay such an obligation upon all Subjects, there is evident reason, because what the supreame power, that is the State (in order to those things wherein supremacy consists) does, is truly the act of all, and none can have just cause of quarrell for dislike of what they themselves doe; and moreover necessity inforces it. Because without this the essence and being of a State were destroyed.[213]

Digges subsequently confirms his analysis with impressive concision when discussing the supremacy of those who hold sovereignty: 'that which makes a State one, is the union of supreame power'.[214]

Digges may possibly have been writing with some knowledge of Hobbes's *Elements of Law*, in which Hobbes had claimed it as one of his major discoveries that the person we engender when we submit to government is the person of the city or commonwealth:

The errour concerning mixt government hath proceeded from want of understanding of what is meant by this word body Politique, and how it signifieth not the Concord, but the union of many men. And though in the Chapters of subordinate Corporations, a Corporation be declared to be one Person in lawe, yet the same hath not been taken note of in the body of a Commonwealth, or City, nor have any of those innumerable writers of Politics observed any such union.[215]

It is true that Hobbes still speaks in this passage of the commonwealth rather than the state, and that he continues to speak in these terms at many points in *Leviathan*. He refers in his chapter *Of Civill Lawes* to the '*Persona Civitatis*, the Person of the Common-wealth' and subsequently explains that the reason why a civil association is generally 'called a *Common-wealth*' is 'because it consisteth of men united in one person'.[216] It is a striking fact about the composition of *Leviathan*, however, that as Hobbes's argument unfolds he increasingly speaks of the possessor of sovereignty not as the person of the commonwealth but as the person of the state. When he discusses 'the Laws and Authority of the Civill State' in Part 3, he informs us that sovereignty is 'Power in the State' and that this form of power is expressed in 'the Civill Laws of the State'.[217] To which he adds in his critique of vain philosophy in Part 4 that those who 'enjoy the benefit of the Laws' are being 'protected by the Power of the Civill State'.[218]

[213] [Digges] 1643, p. 32. [214] [Digges] 1643, p. 65. Cf. also [Digges] 1643, pp. 40, 59.
[215] Hobbes 1969b, pp. 173–4.
[216] Hobbes 1996, ch. 26, p. 183; ch. 33, p. 268. On 'the Person of the Common-wealth' see also Hobbes 1996, ch. 15, p. 104; ch. 17, pp. 120–1; ch. 31, p. 252.
[217] Hobbes 1996, ch. 42, pp. 345, 361, 379. [218] Hobbes 1996, ch. 46, p. 469; ch. 47, p. 476.

Hobbes confirms this understanding of state sovereignty when he turns in Part 3 of *Leviathan* to consider the alleged power of churches over those who exercise sovereign power. He consistently distinguishes between 'the Pastorall Function' and 'power in the Civill State', arguing that every true sovereign must be recognised as 'the Governour both of the State and of the Religion' established in that state.[219] As a result, he continually insists that all priests and pastors receive their authority 'from the Civill State'. They are 'subject to the State' and possess no power 'distinct from that of the Civill State'.[220]

Hobbes is not the first philosopher to speak of the person of the state as the true holder of sovereignty, but he is arguably the first to recognise the full extent of the conceptual difficulties raised by this new and epoch-making commitment. I shall return to these difficulties in analysing his theory of artificial personality in chapter 5 of volume 3, but it is necessary to say a preliminary word about them here. For it is due to Hobbes's clear recognition of these problems, and to the nature of his response to them, that he is perhaps entitled to be regarded as the first philosopher to enunciate a fully systematic and self-conscious theory of the sovereign state.

Hobbes's initial problem is to explain how it is possible for the person of the state to be the true bearer of sovereignty if, as he concedes, the state 'hath no will', and 'can do nothing' of its own accord.[221] Hobbes gives his answer in chapter 16 of *Leviathan* by way of introducing what he describes as his theory of attributed action.[222] The state is able to exercise sovereign power because it is represented by a sovereign whose actions can validly be attributed to the state. The sovereign is an actor who plays the role of the state and thereby acts in its name. The actions performed by the sovereign in his or her public capacity can therefore be attributed to the state, and are in fact (by attribution) the actions of the state. This, then, is how it comes about that, although the state is 'but a word', it is nevertheless the name of the person possessed of sovereign power.[223] Hobbes summarises in chapter 26, his chapter on the concept of civil law. On the one hand, the state or commonwealth 'is no Person, nor has capacity to doe any thing, but by the Representative'. But on the other hand, since the state or commonwealth 'praescribes, and commandeth

[219] Hobbes 1996, ch. 39, p. 322; ch. 47, p. 480.
[220] Hobbes 1996, ch. 42, p. 374; ch. 46, p. 474; ch. 47, p. 482. On 'the Civill State' see also Hobbes 1996, ch. 39, p. 321; ch. 47, pp. 475, 481.
[221] Hobbes 1996, Introduction, p. 9; ch. 24, p. 171; ch. 31, p. 253.
[222] Hobbes 1996, ch. 16, p. 111. [223] Hobbes 1996, ch. 26, p. 184; ch. 31, p. 245.

the observation of those rules, which we call Law', the true legislator is the state or commonwealth itself.[224]

Hobbes's other problem is how to distinguish the representation from the misrepresentation of the state's authority. What enables a sovereign to claim, when he or she performs an act of sovereign power, that such an act can properly and validly be attributed to the person of the state? Hobbes answers in chapter 16 of *Leviathan* by way of introducing his fundamental concept of authorisation and, more specifically, of *being the Author* of an action performed by someone else.[225] When the members of a multitude covenant, each with each, to hand over their conjoined powers to a sovereign, they perform two actions at the same time. They bring into existence the person of the state by way of agreeing who shall be sovereign, and at the same time they authorise their sovereign to act in the name of the state. As a result, they remain the authors of all the actions of the sovereign, and hence (by attribution) of the actions of the state. The validity of the sovereign's actions accordingly stems from the fact that they are at the same time the actions of each and every member of the multitude.[226] It makes no sense for the members of the multitude to criticise the actions of their sovereign, for in doing so they are simply criticising themselves. 'He that complaineth of injury from his Soveraigne, complaineth of that whereof he himselfe is Author; and therefore ought not to accuse any man but himselfe.'[227]

With these contentions, Hobbes is finally able to offer us his formal definition of a commonwealth or state. A state is '*One Person*, *of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence*'.[228] More clearly than any previous writer on public power, Hobbes enunciates the doctrine that the legal person lying at the heart of politics is neither the *persona* of the people nor the official person of the sovereign, but rather the artificial person of the state.[229]

[224] Hobbes 1996, ch. 26, p. 184.

[225] Hobbes 1996, ch. 16, p. 112: 'Of Persons Artificiall, some have their words and actions *Owned* by those whom they represent. And then the Person is the *Actor*; and he that owneth his words and actions, is the AUTHOR: in which case the Actor acteth by Authority.'

[226] Hobbes 1996, ch. 16, p. 114: 'because the Multitude naturally is not *One*, but *Many*; they cannot be understood for one; but many Authors, of every thing their Representative saith, or doth in their name'.

[227] Hobbes 1996, ch. 18, p. 124.

[228] Hobbes 1996, ch. 17, p. 121.

[229] Gierke 1957, p. 139 claims that the thesis 'that the State-personality, in itself, was the real "Subject" of sovereignty' was 'first propounded by Hobbes, and never forgotten afterwards'.

VII

I have argued that the idea of supreme political authority as the authority of the state was originally the outcome of one particular theory of civil association, a theory at once absolutist and secular-minded in its ideological allegiances. This theory was in turn the product of the earliest major counter-revolutionary movement in modern European history, the movement of reaction against the ideologies of popular sovereignty initially developed in the Dutch and French religious wars and subsequently restated in the course of the English constitutional upheavals of the mid-seventeenth century.[230] It is not surprising, therefore, to find that both the ideology of state power and the new terminology employed to express it served to provoke a series of doubts and criticisms that have never been altogether stilled.

Some of the initial hostility stemmed from conservative theorists anxious to uphold the venerable ideal of *un roi*, *une foi*, *une loi*. They repudiated any suggestion that the aims of public authority should be purely civil in character, and sought to reinstate a closer relationship between allegiance in church and state. Some wished in addition to make it clear that sovereigns are of far higher standing than mere representatives, and to insist that the powers of the state must be understood to inhere in them and not in the person of the state.[231]

Much of the initial hostility, however, came from radical theorists who wished to reassert the ideal of popular sovereignty in place of the sovereignty of the state. The contractarian writers of the next generation, including John Locke and such admirers as Benjamin Hoadly, sought to avoid the terminology of state power altogether, preferring to speak of 'civil government' or 'supreme civil power'.[232] Echoing similar suspicions, the so-called commonwealthmen maintained their loyalty to the classical ideal of the self-governing republic throughout much of the eighteenth century, and likewise eschewed the vocabulary of state power in favour of continuing to speak of civil associations and commonwealths.[233]

[230] For a commentary on this view about the acquisition of the concept of the state see Geuss 2001, pp. 48–52.

[231] See Rowen 1961.

[232] Locke 1988, p. 135 speaks on his title-page of taking 'Civil-Government' as his theme; Hoadly 1773 speaks of 'civil authority' (p. 189), 'civil government' (p. 191) and 'supreme civil power' (p. 203). On Locke as a theorist not of the state but of 'political society' see Dunn 1969, pp. 120–47.

[233] Robbins 1959, pp. 125, 283; Kramnick 1968, pp. 236–60; Pocock 1975, pp. 423–505.

It is true that, at the end of the eighteenth century, a renewed counter-revolutionary effort was made to neutralise these various populist doubts. Hegel and his followers argued that the English contractarian theory of popular sovereignty merely reflected a failure to distinguish the powers of civil society from those of the state, and a consequent failure to recognise that the independent authority of the state is indispensable if the purposes of civil society are to be fulfilled. But this hardly provided an adequate reassurance. On the one hand, the anxiety of liberal theorists about the relationship between the powers of states and the alleged sovereignty of citizens gave rise to confusions which have never been resolved. And on the other hand, a deeper criticism arose out of these Hegelian roots, according to which the state's vaunted independence from its own agents as well as from the members of civil society amounts to nothing more than a pious fraud. Sceptics in the tradition of Michels and Pareto, no less than socialists in the tradition of Marx and Engels, have never ceased to insist that modern states are in truth nothing more than the executive arms of their own ruling class.

Given the importance of these rival ideologies, it is remarkable how quickly the Hobbesian conception of the state nevertheless succeeded in establishing itself at the heart of political discourse throughout western Europe. This is not to say that the concept was always well understood even by those who made prominent use of it. Rather it gave rise to a serious confusion which has continued to bedevil the analysis of public power ever since. The chief architects of the confusion were those self-consciously commonsensical writers who felt it obvious that the powers of the state must be reducible to the powers of some identifiable person or apparatus of government. Within the Anglophone tradition, the classic statement of this commitment can be found in John Austin's *Province of Jurisprudence Determined* of 1832. When Austin turns to the state, he begins with his usual confidence by informing us of 'the meaning which I annex to the term':

> '*The* state' is usually synonymous with '*the* sovereign'. It denotes the individual person, or the body of individual persons, which bears the supreme powers in an independent political society.[234]

Although Austin pronounces himself a deep admirer of Hobbes,[235] his definition of the state has the effect of obliterating the very distinction on which Hobbes's theory is based.

[234] Austin 1995, p. 190 note. [235] Austin 1995, p. 229 and note.

By contrast with the positivism of so much English legal theory,[236] the Hobbesian view of the person of the state as the seat of sovereignty won immediate acceptance among a broad range of writers on natural jurisprudence in continental Europe. Perhaps the most important conduit for the transmission of this doctrine was Samuel Pufendorf's treatise of 1672, *De Iure Naturae et gentium*, which appeared in an English version by Basil Kennet together with Jean Barbeyrac's explanatory notes in 1717.[237] Pufendorf explicitly draws our attention to the fact that (as Kennet's version puts it) 'Mr *Hobbes* hath given us a very ingenious Draught of a Civil State, conceived as an *Artificial Man*'.[238] Although Pufendorf is critical of Hobbes at many points, he goes on to offer an analysis of state power which is at once Hobbesian in character and at the same time succeeds in resolving any lingering ambiguities in Hobbes's own account.

Pufendorf begins by offering a much fuller account than Hobbes had done of the two different worlds we simultaneously inhabit. One is the world of nature, while the other is the artificial world we construct for ourselves when we agree to follow a common life and regulate it by the rule of law. A number of Renaissance philosophers of language had already maintained that one of the distinctive powers of the human mind is that of calling into existence a moral world by the act of recognising and distinguishing moral entities. Pufendorf offers an unusually extensive exploration of this world of artifice, which he takes to be created by the imposition of moral names backed by an understanding of the properties they denote, all of which are 'fram'd with Analogy to Substance'.[239] Some of the moral persons inhabiting this world are described as 'simple'. Their existence is merely a reflection of the fact that all natural persons will find themselves playing a variety of roles, 'at home a Householder, a Senator in Parliament, an Advocate in the Halls of Justice, and a Counsellor at Court'.[240] But other moral persons are described as compound entities. They are brought into existence 'when several Individual Men are so united together, that what they *will* or *act* by virtue of that Union, is esteem'd a single Will, and a single Act, and no more'.[241]

[236] The same assumptions continue to underlie recent historical discussions of the state. Harding 1994, p. 58 complains that, in speaking of the state as a person distinct from both rulers and ruled, I introduce 'a mysterious new entity which deserves the attention of Ockham's razor'. But the concept of the state as we have inherited it *is* a mysterious entity, and I want to try to penetrate the mystery rather than dismiss it.

[237] See Pufendorf 1717. It is from this version that I quote.

[238] Pufendorf 1717, VII. II. XIII, p. 475. [239] Pufendorf 1717, I. I. XII, p. 7.

[240] Pufendorf 1717, I. I. XIV, p. 9. [241] Pufendorf 1717, I. I. XIII, p. 8.

When Pufendorf turns in Book 7 to apply this general theory of *entia moralia* to civil societies, he particularly singles out that 'Union of Wills and of Forces' which gives rise to 'a Common wealth, or Civil State, the strongest of all *Moral Persons*, or *Societies*'.[242] With this characterisation, he at once reiterates and places in a broader framework the Hobbesian analysis of the person of the state. He thereby arrives at what he takes to be 'the most proper Definition of a Civil State', according to which 'it is a compound Moral Person, whose Will, united and tied together by those Covenants which before pass'd among the Multitude, is deem'd the Will of all; to the End, that it may use and apply the Strength and Riches of private Persons towards maintaining the common Peace and Security'.[243]

As Pufendorf subsequently confirms, it follows that we cannot speak of the holders of sovereign power, even when acting in their public capacities, as the true bearers of sovereignty. Rather the 'subject' of sovereign power must be the person of the state, in whose name and on whose behalf the sovereign's actions are performed:

> The State in exerting and exercising its Will, makes use either of a single Person, or of a Council, according as the Supreme Command hath been conferr'd, either on the former or on the latter. Where the Sovereignty is lodg'd in one Man, there the State is supposed to chuse and desire whatever that one man (who is presumed to be Master of perfect Reason,) shall judge convenient; in every Business or Affair, which regard the End of Civil Government, but not in others.[244]

Although every act of the state must be performed by the sovereign, the will in the light of which the sovereign conducts himself remains 'that one Will, which we attribute to the State'.[245] The role of the sovereign, as in Hobbes, is that of 'representing the Will of the State'.[246]

By the middle of the eighteenth century, this vision of the state had become widely accepted in continental Europe. Perhaps the clearest reflection of this acceptance can be found in the attempt made by Louis de Jaucourt to summarise conventional wisdom in the article he contributed to the *Encyclopédie* in 1756 under the title *L'Etat*. There we read that '*The state* can be defined as a civil society by means of which a multitude of men are united together through their dependence upon a sovereign.'[247] After this definition there follows a recognisably Hobbesian account of the distinction between a state and a mere aggregate of individuals:

[242] Pufendorf 1717, VII. II. V, p. 468.
[243] Pufendorf 1717, VII. II. XIII, p. 475.
[244] Pufendorf 1717, VII. II. XIV, p. 476.
[245] Pufendorf 1717, VII. IV. II, p. 491.
[246] Pufendorf 1717, VII. II. XIV, p. 476.
[247] Jaucourt 1756, p. 19: 'on peut définir l'*état*, une société civile, par laquelle une multitude d'hommes sont unis ensemble sous le dépendance d'un souverain'.

This union of many persons in a single body, a union produced by putting together the wills and powers of every individual, is what distinguishes the *state* from a multitude. A multitude is nothing more than an assemblage of various persons, among whom each has a particular will. But the *state* is a society animated by a single soul which directs all its movements in a constant manner and in such a way as to procure the benefit of all.[248]

Like Pufendorf, Jaucourt concedes that, if the state is to be animated in this way, it stands in need of a sovereign to act on its behalf. The capacity of the state to remain in being depends on 'the establishment of a superior power' by means of which 'this union of individual wills is held in place'.[249] Nevertheless, the powers assigned to such sovereigns remain the powers of the state, which can thus 'be considered as a distinct moral person, of which the sovereign is the head and all individuals are the members'.[250] The state is accordingly seen, once again, as the true bearer of sovereignty, the possessor of 'certain rights which are distinct from those of each individual citizen, and which no individual or group of citizens can arrogate to themselves'.[251]

By this time, the idea of the state as the seat of sovereignty was beginning to be accepted even by English writers on jurisprudence. Perhaps the most distinguished example is furnished by Sir William Blackstone's *Commentaries on the Laws of England*, the first volume of which appeared in 1765. Blackstone's opening discussion of 'the very end and institution of civil states' strongly echoes Hobbes. 'A state', Blackstone declares, 'is a collective body, composed of a multitude of individuals, united for their safety and convenience, and intending to act together as one man.'[252] Blackstone goes on to pinpoint the difficulty to which this analysis gives rise. If the state is to act as one man, 'it ought to act by one uniform will', but because political communities 'are made up of many natural persons, each of whom has his particular will and inclinations, these several wills cannot by any *natural* union be joined together'.[253] The only solution, Blackstone repeats, is for the members of the multitude to convert

[248] Jaucourt 1756, p. 19: 'Cette union de plusieurs personnes en un seul corps, produite par le concours des volontés & des forces de chaque particulier, distingue l'*état*, d'une multitude: car une multitude n'est qu'un assemblage de plusieurs personnes, dont chacune a sa volonté particulière; au lieu que l'*état* est une société animée par une seule âme qui en dirige tous les mouvemens d'une maniere constante, relativement à l'utilité commune.'

[249] See Jaucourt 1756, p. 19 on 'l'établissement d'un pouvoir supérieur' by which 'l'union des volontés [est] soûtenue'.

[250] Jaucourt 1756, p. 19: 'On peut considérer l'*état* comme une personne morale, dont le souverain est la tête, & les particuliers les membres.'

[251] Jaucourt 1756, p. 19: 'certains droits distincts de ceux de chaque citoyen, & que chaque citoyen, ni plusieurs, ne sauroient s'arroger'.

[252] Blackstone 1857, p. 38. [253] Blackstone 1857, p. 38.

themselves into a single person by way of replacing their individual wills by the will of a sovereign representative. They must seek 'by the consent of all persons to submit their own private wills to the will of one man, or of one or more assemblies of men, to whom the supreme authority is intrusted'.[254] By acting in this way, they can hope to make good their lack of natural union by instituting the purely political union of the state, a union in which the sovereign is the representative while the union itself remains the seat of sovereignty.

VIII

The immediate outcome of the conceptual revolution I have traced was to set up a series of reverberations in the wider political vocabularies of the western European states. Once the term *state* came to be accepted as the master noun of political discourse, a number of other concepts and assumptions bearing on the analysis of sovereignty had to be reorganised or in some cases given up. To round off this analysis, we need to examine the process of displacement and redefinition that accompanied the entrenchment of the concept of the state as an artificial person and as the bearer of sovereignty.

One concept that underwent a consequential process of redefinition was that of political allegiance. A subject or *subditus* had traditionally sworn allegiance to his sovereign as a liege lord. But with the acceptance of the idea that sovereignty is lodged not with rulers but with the state, this was replaced by the familiar view that citizens owe their loyalty to the state itself. This is not to say that those who originally advanced this argument had any desire to give up speaking of citizens as *subditi* or subjects. On the contrary, the earliest theorists of the state retained a strong preference for this traditional terminology, using it as a means of countering both the monarchomach inclination to speak of the sovereignty of the *universitas* and the classical republican contention that we ought to speak only of *civitates* and *cives*, of cities and their citizens. Hobbes, for example, declares with his usual cunning in his first published treatise on civil science that he is writing specifically 'about the citizen': *De Cive*. Yet it is one of his most important polemical claims that, as the English translation expresses it, 'each *Citizen*, as also every *subordinate civill Person*' ought properly to regard himself as 'the SUBJECT of him who hath the *chiefe command*'.[255]

[254] Blackstone 1857, p. 38. [255] Hobbes 1983b, V. XI, p. 90.

Hobbes is in complete agreement with his radical opponents, however, when he goes on to argue that citizens ('that is to say, Subjects')[256] ought not to think of their allegiance as due to the natural persons who exercise sovereign power. The monarchomachs had already insisted that, as Hotman had put it, the holders of offices under a monarchy must be viewed as councillors of the kingdom, not of the king, and as servants of the crown, not of the person wearing it.[257] Hobbes elaborates the same argument when he declares with much emphasis in *De Cive* that the absolute obedience owed by each and every subject is due not to the person of their ruler, but rather to the *civitas* itself as 'a civill Person' and thus as the seat of supreme power.[258]

A further and closely connected concept that underwent a comparable process of transformation was that of treason. As long as the concept of allegiance remained connected with the doing of homage, the crime of treason remained that of behaving treacherously towards a sovereign lord. By the end of the sixteenth century, however, this was coming to seem less and less adequate. Even in the case of England, still bound by the Statute of 1352 in which treason had been defined to include the crime of compassing or imagining the king's death, the judges began to place increasingly wide constructions upon the meaning of the original Act. The aim in almost every case was to establish a view of treason essentially as an offence committed against the king in the discharge of his office.[259]

Meanwhile the political writers, untrammelled by the need to wrestle with precedents, arrived by a more direct route at the familiar view of treason as a crime not against the king but against the state. As so often, it is Hobbes who states the new understanding most unequivocally. He declares at the end of his analysis of dominion in the English version of *De Cive* that those who are guilty of treason are those who refuse to perform the duties 'without which the State cannot stand'.[260] Subsequently he takes this assumption for granted in *Leviathan*, observing in chapter 28 that anyone who commits treason 'suffers as an enemy of the Commonwealth',[261] and adding in his Review and Conclusion that a spy can be defined as someone who acts as an 'Enemy of the State'.[262]

The acceptance of state sovereignty also had the effect of devaluing the more charismatic elements of political leadership which, as I

[256] Hobbes 1983b, XII. VIII, p. 151. [257] Hotman 1972, pp. 254, 298, 402.
[258] Hobbes 1983b, V. VII–XII, pp. 88–90.
[259] On this process see Holdsworth 1922–72, vol. 8, pp. 307–33.
[260] Hobbes 1983b, XIV. XX, p. 181. [261] Hobbes 1996, ch. 28, p. 216.
[262] Hobbes 1996, Conclusion, p. 485.

indicated at the outset, had earlier been of central importance to the theory and practice of government throughout western Europe. Among the assumptions that suffered displacement, the most important was the claim that sovereignty is conceptually connected with display, that majesty serves in itself as an ordering force. Even Machiavelli still assumes that a ruler can expect to derive protection from *la maestà dello stato*, from a connection between his condition of stateliness and his capacity to maintain his state.[263] It proved impossible, however, for such beliefs about the charisma attaching to public authority to survive the transfer of that authority to the impersonal agency – Rousseau's 'purely moral person'[264] – of the modern state. By the start of the eighteenth century, we already find conservative writers lamenting that, as Lord Bolingbroke observes in an evident allusion to *Leviathan*, 'the state is become, under ancient and known forms, a new and undefinable monster', with the result that a monarchy like England finds itself left with 'a king without monarchical splendor' as head of state.[265]

It was of course possible to transfer the attributes of majesty to the state's representatives, permitting them to conduct state openings of parliament, to be granted state funerals, to lie in state and so forth. Once it became accepted, however, that even heads of state are simply holders of offices, the ascription of so much pomp and circumstance to mere functionaries came to seem not merely inappropriate but even absurd, a case not of genuine pomp but of mere pomposity. This insight was first elaborated by the defenders of 'free states' in their anxiety to insist that, in John Milton's phrase, rulers should never be 'elevated above thir brethren' but should 'walk the streets as other men'.[266] Thomas More's *Utopia*, for example, contains an early and devastating portrayal of public magnificence as nothing more than a form of infantile vanity.[267] John Ponet's *Shorte Treatise* of *Politike Power* includes a more minatory reminder of the punishments visited by God upon the Israelites for demanding 'a galaunt and pompous king'.[268] And Milton in *The Ready and Easy Way* speaks with withering contempt of those rulers who aspire 'to set a pompous face upon the superficial actings of State'.[269]

[263] See Machiavelli 1960, p. 74, and cf. pp. 76, 93. The same applies even more strongly to Machiavelli's contemporaries among 'mirror-for-princes' writers. See, for example, Pontano 1952, pp. 1054–6; Sacchi 1608, p. 68.

[264] See Rousseau 1966, p. 54 on 'la personne morale qui constitue l'État'.

[265] Bolingbroke 1844b, p. 333.

[266] Milton 1980, p. 425.

[267] See More 1965, pp. 152–6 on the reception of the Anemolian ambassadors.

[268] [Ponet] 1556, Sig. F, 4^{r}.

[269] Milton 1980, p. 426.

One outcome of distinguishing the authority of the state from that of its agents was thus to sever a time-honoured connection between the presence of majesty and the exercise of majestic powers.[270] Displays of stateliness eventually came to be seen as mere 'shows' or 'trappings' of power, not as features intrinsic to the workings of power itself.[271] When, for example, Gasparo Contarini concedes that the Doge of Venice is permitted to uphold the dignity of his office with a certain magnificence, he emphasises that this is just a matter of appearances, using a phrase that Lewes Lewkenor was to translate by saying that the Doge is allowed a 'royall appearing shew'.[272] Speaking with much greater hostility, Milton agrees that a monarch 'sits only like a great cypher', his 'vanitie and ostentation' having nothing to contribute to the ordering force of public authority.[273]

For the most self-conscious rejection of the older images of power, as well as the most unblinking vision of the state as a purely impersonal authority, we cannot do better than to end by turning once again to Thomas Hobbes. Discussing these concepts in chapter 10 of *Leviathan*, Hobbes deploys the idea of an effective power to command in such a way as to absorb every other element traditionally associated with the notions of public honour and dignity. To hold dignities, he declares, is simply to hold 'offices of Command'; to be held honourable is nothing more than 'an argument and signe of Power'.[274] Here, as throughout, it is Hobbes who first speaks systematically and unapologetically in the abstract and unmodulated tones of the modern theorist of the sovereign state.

[270] Foucault 1977 popularised an alleged contrast between the modern repudiation of power as spectacle and its centrality in the Renaissance. See also Greenblatt 1981. But as Pye 1984 observes, this arguably underestimates the extent to which, even in the Renaissance, the theatrical conception was already in contestation with a more abstract understanding of state authority.

[271] On the distinctiveness of this conception of public power see Geertz 1980, pp. 121–3.

[272] See Lewkenor 1599, p. 42, translating 'specie regia' from Contarini 1626, p. 56.

[273] Milton 1980, pp. 426, 429.

[274] Hobbes 1996, ch. 10, pp. 63–4, 65.