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Grotius on Ecclesiastical Counsel and Declarative Rule

Mogens Lærke¹

1. Introduction

This paper takes a fresh look at Hugo Grotius's conception of the relations between ecclesiastical counsel and sovereign power in *De imperio summarum potestatum circa sacra*, his principal theoretical work on church and state.² The conception is part of a broader theory of ecclesiastical right, dealing with the political and juridical aspects of church-state relations and the authority of the state in relation to things such as the ordination of clergy, the funding of churches, the right to excommunicate, and generally the use of temporal power in spiritual matters. *De imperio* was written around 1616–7 as a systematic defence of Oldenbarnevelt's political intervention in the heated theological disputes between Arminians and Gomarists in the 1610s, but was only published posthumously in 1647.³ On the most general level, it defends the view that the 'authority in matters of religion belongs to the sovereign power' on the basis of an argument predicated on the political axiom of the indivisibility of sovereignty.⁴ In short, it contains a theory of *ius circa sacra*—the 'right concerning sacred matters'—as the topic was generally referred to in the Netherlands after The Great Revolt. It belongs to a

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² Hugo Grotius, *De imperio summarum potestatum circa sacra*, 2 vols., ed. and trans. H.-J. van Dam (Leiden, 2001). Versions of the paper were presented at the conference *The Intellectual Lives of Hugo Grotius* at Princeton University in May 2018, at the *Intellectual History Seminar* at All Souls College, Oxford University, in October 2018, and at the workshop *The Dutch Golden Age* at the ENS de Lyon in November 2018. I thank the participants in these events for their input and the organizers for inviting me.

³ *De imperio* was written on the basis of an earlier draft, the *Tractatus de iure magistratum circa ecclesiastica*, in circulation from 1614. See Harm-Jan van Dam, 'Hugo Grotius's manuscript of *De Imperio summarum potestatum circa sacra* identified', *Grotiana*, 11 (1990), pp. 34–42; Harm-Jan van Dam, 'Le droit et le sacré selon Grotius et la découverte d'une esquisse de son *De Imperio summarum potestatum circa sacra*', *Grotiana* 20 (2001), pp. 13–33; Harm-Jan van Dam, 'De Imperio summarum potestatum circa sacra', in *Hugo Grotius Theologian. Essays in Honour of G. H. M. Posthumus Meyjes*, ed. H. J. M. Nellen and E. Rabbie (Leiden, 1994), pp. 19–40; Harm-Jan van Dam, 'Introduction', in Grotius, *De imperio*, I, pp. 1–151.

⁴ Grotius, *De imperio*, vol I, chap. I, chapter title, pp. 154–5. For the indivisibility of sovereignty, see e.g. *De imperio*, vol. I, chap. I, pp. 158–9: 'that which is highest can only exist if it is unique', for otherwise one 'creates two sovereign powers within one people'; *De imperio*, vol. I, chap. I, pp. 160–1: 'a state [*respublica*] itself is called one first of all because it has one sovereign leader [*unius summi imperantis*]'. Unity of sovereignty does not require that it belongs to a single person, as in a monarchy, but only unity of the sovereign function, i.e. of the 'institution': 'though the body that wields the sovereign power must be one, it does not have to be one person; it is sufficient for it to be one institution' (*De imperio*, vol. I, chap. I, pp. 156–7; modified). In his translation of *De imperio*, Van Dam gives *summa potestas* as 'supreme power' or 'supreme authority'. I have everywhere given the expression as 'sovereign power' or 'sovereign'. Using the term 'authority' in that context invites confusion between *potestas* (usually given as 'power'), *imperium* (which Van Dan mostly gives as 'authority'), and *auctoritas* (which Van Dam gives as 'weight' or 'authority'). Moreover, I prefer 'sovereign' over 'supreme' in order to facilitate comparison with other contemporary or near-contemporary political theorists, Hobbes in particular. The Latin version of *Leviathan* gives the English 'sovereign' as *summa potestas* (see e.g. Hobbes, *Leviathan*, ed. N. Malcolm (Oxford, 2012), chap. XVIII, vol. II, pp. 264–5). The first English translation of Spinoza's *Tractatus theologico-politicus*, published in 1689 and probably made by Charles Blount, gives *summa potestas* as 'sovereign power' (see Spinoza, *A Treatise partly theological, and partly political*, London, 1689).

varied lineage of doctrines that can be traced back to Lipsius and Coornhert and that, via Wtenbogaert and Grotius, continues all the way up to Spinoza who dedicates the entire chapter XIX of his 1670 *Tractatus theologico-politicus* to the topic.⁵ Apart from Grotius's own *Ordinum pietas* of 1613,⁶ the closest parent of *De imperio* is Johannes Wtenbogaert's 1610 *Tractaet van t'ampt ende authoriteyt eener hoogher Christelicher overheydt in kerckliche saecken*. Here, Wtenbogaert rejects both the 'papist' model of *plenitudo postestatis* which subordinates the state to the church, and the 'collaterality' model favoured by orthodox Calvinists which separates and correlates them, and argues in favour of the 'true design of God', which subordinates the church to the state.⁷ Much inspired by Wtenbogaert's *Tractaet*, Grotius's *Ordinum pietas* develops a similar position, arguing that 'nobody has the right to decide on the faith of the church inasmuch as it is public, except for him in whose hand and power all public bodies lie'.⁸

Both Wtenbogaert's *Tractaet* and Grotius's *Ordinum pietas* are extended pamphlets. They were written specifically to defend Oldenbarnevelt's church policies in the early 1610s—policies that the authors had themselves helped design. *De imperio*, too, is still very much entangled in these particular political circumstances. It is, however, much broader in scope and displays a clear ambition of formulating a more abstract position based on principle. This position is often described as 'Erastian'.⁹ For example, for Jeffrey Collins, *De*

⁵ See Spinoza, *Theological-Political Treatise*, chap. XIX, in *The Collected Works*, vol. II, ed. and trans. E. Curley (Princeton, 1985–2016), vol. II, pp. 332–44. On the Dutch tradition of *ius circa sacra* generally, see Douglas Nobbs, *Theocracy and Toleration: A Study of The Disputes in Dutch Calvinism from 1600–1650* (Cambridge, 1938); Joseph Lecler, *Histoire de la tolérance au siècle de la Réforme* (Paris, 1955), pp. 651–73. On Coornhert and Lipsius, see Gerrit Voogt, 'Primacy of Individual Conscience or Primacy of State? The Clash Between Dirck Volckertsz. Coornhert and Justus Lipsius', *The Sixteenth Century Journal*, 28 (4) (1997), pp. 1231–49. On Grotius, see Andrea Caspani, 'Alle origini dello "ius circa sacra" in Grozio', *Revista di Filosofia Neo-Scolastica*, 79 (2) (1987), pp. 217–49; Edwin Rabbie, 'L'Église et l'état dans la pensée de Hugo Grotius', *Grotiana*, 16/17 (1995), pp. 97–118; Edwin Rabbie, 'Grotius, James I, and the *Ius Circa Sacra*', *Grotiana*, 24/25 (2003/2004), pp. 25–40; Julie Saada, 'Hugo Grotius et le *jus circa sacra*', in *Réforme française et tolérance. Éléments pour une généalogie du concept de tolérance*, ed. N. Piqué and G. Waterlot (Paris: L'Harmattan, 1999); Christophe Beal, 'Grotius et le *ius circa sacra*', *Dix-septième siècle*, 241 (2008), pp. 709–24; Mogens Lærke, '*Jus circa Sacra*. Elements of Theological Politics in 17th Century Philosophy: From Hobbes and Spinoza to Leibniz', *Distinktion. Scandinavian Journal of Social Theory*, 10 (2005), pp. 41–64; Mogens Lærke, 'La controverse entre Grotius, Hobbes et Spinoza sur le *jus circa sacra*. Textes, pretexts, contextes et circonstances', *Revue de synthèse*, 137 (2016), pp. 388–425; Mogens Lærke, 'Leibniz, Spinoza, and the *ius circa sacra*. Excerpts from the *Tractatus theologico-politicus*, Chap. XIX', in *Leibniz und das Naturrecht*, ed. L. Basso (Stuttgart, 2019), pp. 141–53. Specifically on Spinoza, see Pierre-François Moreau, 'Spinoza et le *jus circa sacra*', *Studia Spinozana*, 1 (1985), pp. 335–44; Roberto Bordoli, 'The Monopoly of Social Affluence: The *Jus circa sacra* around Spinoza', in *The Dutch Legacy: Radical Thinkers of the 17th Century and the Enlightenment*, ed. S. Lavaert and W. Schröder (Leiden, 2017), p. 121–49; Mogens Lærke, *Spinoza and the Freedom of Philosophizing* (Oxford, 2021), chapter 11. For a detailed book-length comparative study of the theological-political theories of Grotius, Hobbes, and Spinoza, see Atsuko Fukuoka, *The Sovereign and the Prophets. Spinoza on Grotian and Hobbesian Biblical Argumentation* (Leiden, 2018).

⁶ Hugo Grotius, *Ordinum Hollandiae ac Westfrisiae pietas*, ed. and trans. E. Rabbie (Leiden, 1995), p. 227. For commentary, see Edwin Rabbie, 'Hugo Grotius's *Ordinum pietas*', in *Acta Conventus Neo-Latini Hafniensis. Proceedings of the Eighth International Congress of Neo-Latin Studies, Copenhagen 12 August to 17 August 1991*, ed. R. Schnur et al. (New York, 1994), pp. 849–55; Edwin Rabbie, 'Introduction', in Grotius, *Ordinum pietas*, pp. 1–99.

⁷ Johannes Wtenbogaert, *Tractaet van t'ampt ende authoriteyt eener hoogher Christelicher overheydt in kerckliche saecken*, 2nd edition (S'Graven-Hague, 1610); see also Nobbs, *Theocracy and Toleration*, pp. 25–49; Fukuoka, *The Sovereign and the Prophets*, pp. 18–24.

⁸ Grotius, *Ordinum pietas*, p. 189; for a tribute to Wtenbogaert and his *Tractaet*, see *ibid.*, p. 199.

⁹ See e.g. Lecler, *Histoire*, p. 660; Nobbs, *Theocracy and Toleration*, chap. II and V.

imperio represents ‘a standard natural rights Erastianism’ of the Dutch Remonstrant variety.¹⁰ The association of the Dutch tradition of *ius circa sacra* and Erastianism, or even to Erastus himself, is not unwarranted. Generally, as Charles Gunnoe notes, ‘Erastus’s ideas on church-state relations found their greatest resonance in the Netherlands’.¹¹ Indeed, the first occurrences of the notion of *ius circa sacra*, so characteristic for the tradition that Wtenbogaert and Grotius belong to, can be traced back Erastus’s *Explicatio gravissimae quaestionis* and to Lipsius’s *Politiorum sive Civilis doctrinae libri sex*, both published in 1589.¹² While Erastus admittedly does not appear to play a role in Grotius’s *Ordinum pietas*, the *Explicatio* is an important source for *De imperio*, especially for the discussion of Church Elders in chapter 11.¹³ Some caution is however warranted in using the characterization ‘Erastian’. First, as J. Neville Figgis already pointed out in a now classic article,¹⁴ what is generally described as ‘Erastianism’ is not to be confused with the doctrines developed by Erastus himself in the *Explicatio* which are not broadly concerned with the relations between state and church but more specifically with the question of who detains the right to excommunicate.¹⁵ Second, and more important in our context, when taking a closer look at *De imperio* and going deeper into the details of Grotius’s argument, it rapidly becomes clear that it cannot be reduced to being *only* such archetypal ‘Grotian Erastianism’ as Gunnoe argues,¹⁶ or *only* a paradigmatic ‘standard natural rights Erastianism’ as Collins argues, but that it *also* develops a systematic argument which is entirely its own.

In the following, I study one important aspect of Grotius’s theological-political theory—his conception of ecclesiastical counsel—where the specificity of his approach comes clearly into view. I am particularly interested in a specific form of directive rule or counsel that Grotius calls ‘declarative’. It has the surprising feature of enforcing an obligation and taking away the freedom of the counselled and yet involving no attribution of coercive force to the counsellor. By focusing on this issue, I aim at three conclusions: First, showing how Grotius’s model of ecclesiastical counsel is not quite as clear-cut Erastian as a first reading of *De imperio* might suggest and as many commentators have asserted, but that, on some level, it grants the church surprisingly deep powers to influence the decision processes of the governing authorities; second, showing that these powers, as related to ecclesiastical counsel, are entirely ordered around the intricacies regarding declarative rule; and third, showing that Grotius’s model of declarative rule and ecclesiastical counsel, in the way it functions, is not concerned with demonstration and judgement as much as with guidance, procedure and deliberation.

¹⁰ Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford, 2005), p. 128; Charles D. Gunnoe, ‘The Evolution of Erastianism: Hugo Grotius’s Engagement with Thomas Erastus’, *Grotiana*, 34 (2013), p. 60; Noel Malcolm, *Aspects of Hobbes* (Oxford, 2002), p. 41.

¹¹ Charles D. Gunnoe, *Thomas Erastus and the Palatinate. A Renaissance Physician in the Second Reformation* (Leiden, 2010), p. 394–6, here p. 394.

¹² See Thomas Erastus, *Explicatio gravissimae quaestionis utriusque excommunicatio, quatenus religionem intelligentes & amplexantes, à sacramentorum usu, propter admissum facinus arcet: mandato nitatur Divino, an excogitata sit ab hominibus* (London, 1589), Book III, chap. 1, p. 162–3 (my italics): ‘Sed universam gubernationem reipublicae visibilem, sive circa res civiles et profanas, sive circa res sacras cultumque divinum versaretur, uni solique magistratui politico tradidisse’. For Lipsius, see *Sixte Bookes of Politickes or Civil Doctrine*, trans. W. Jones (London, 1594), Book IV, chap. 2, p. 61: ‘the Prince has not free power in holy matters [*Non principi liberum in sacra ius*]; God forbid he should; but a certain insight, and that rather for their defense, then to attribute to himself, as judge to determine of them’.

¹³ Charles D. Gunnoe, ‘The Evolution of Erastianism’, p. 58; Van Dam, ‘*De Imperio Summarum Potestatum circa Sacra*’, pp. 37–8; Van Dam, ‘Introduction’, in Grotius, *De Imperio*, vol. I, pp. 114–6.

¹⁴ See J. Neville Figgis, ‘Erastus and Erastianism’, *Journal of Theological Studies*, 2 (5) (1900), pp. 66–101.

¹⁵ Gunnoe, ‘The Evolution of Erastianism’, p. 47.

¹⁶ *Ibid.*, p. 47.

In developing my argument, I am going to treat Grotius's work as a piece of systematic political philosophy, that is to say, as a conceptual model of ecclesiastical right. I am interested in the formal aspects of his argumentative strategy, i.e. the way that his principles of reasoning are related and structured in relation to my specific topic, i.e. ecclesiastical counsel. I want to reconstruct how Grotius systematically builds up his model by means of distinctions, concepts and argumentative structures that are, for all intents and purposes, his own. This systematic, conceptual approach imposes important restrictions on my analysis. First, I shall pay no attention to the way that Grotius mobilizes the Bible in order to both elaborate and justify his position. Those interested in the topic may consult recent work by Eric Nelson and Atsuko Fukuoka who have both stressed the way that Grotius constructs his theory of ecclesiastical right in constant dialogue with other contemporary or near-contemporary theories, often mediated via a shared paradigm of biblical references and topics.¹⁷ Second, I do not address the substantial and fascinating historical work done recently by intellectual and church historians including John Guy, David Colclough, Jacqueline Rose, Joanne Paul, and others, on the rhetorical aspects of early modern conceptions of the relations between political counsel, including ecclesiastical counsel, and sovereign command, particularly in Tudor England.¹⁸ I have discussed some aspects of how similar debates played out in the seventeenth-century Dutch context elsewhere.¹⁹ Third, and finally, I do not discuss the details of the historical circumstances, contextual background, or reception and impact of Grotius's work. For those questions, I will simply refer the reader to the ample work on *De imperio* by Harm-Jan van Dam, Henk Nellen, Edwin Rabbie, Marco Barducci, and others.²⁰

2. The Church and the Constitutive Rule of the Sovereign Power

Let us first consider how, in *De imperio*, Grotius situates the church within his general classification of government, types of 'rule' or 'regime' (*regimen*), outlined in chapter IV. The classification can be summarised by the following schema:

¹⁷ See Fukuoka, *The Sovereign and the Prophets*, pp. 93–150; Eric Nelson, *The Hebrew Republic. Jewish Sources and the Transformation of European Political Thought* (Cambridge, Mass., 2010).

¹⁸ See John Guy, 'The Rhetoric of Counsel in Early Modern England', in *Tudor Political Culture*, ed. D. Hoak (Cambridge, 1995), pp. 292–310; David Colclough, *Freedom of Speech in early Stuart England* (Cambridge, 2005); Jacqueline Rose, 'Kingship and Counsel in Early Modern England', *The Historical Journal*, 54 (1) (2011), pp. 47–71; Jacqueline Rose, 'The Problem of Political Counsel in Medieval and Early Modern England and Scotland', in *The Politics of Counsel in England and Scotland, 1286–1707*, ed. J. Rose (Oxford, 2017), pp. 1–43; Joanne Paul, *Counsel and Command in Early Modern English Thought* (Cambridge, 2020); Joanne Paul, 'Thomas Elyot on Counsel, Kairos and Freeing Speech in Tudor England', in *Freedom of Speech, 1500–1850*, ed. R. Ingram, J. Peacey, and A. W. Barber (Manchester, 2020), chap. 2.

¹⁹ See Lærke, *Spinoza and the Freedom of Philosophizing*, esp. chap. 4 and 6.

²⁰ For work specifically on the English reception, see Marco Barducci, *Hugo Grotius and the Century of Revolution 1613–1718. Transnational Reception in English Political Thought* (Oxford, 2017); Marco Barducci, 'Political and Ecclesiological Contexts for the Early English Translations of Grotius's *De Veritate* (1632–1686)', *Grotiana*, 33 (2012), pp. 70–87; Marco Barducci, 'The Anglo-Dutch Context for the Writing and Reception of Hugo Grotius's *De imperio Summarum Potestatum Circa Sacra*, 1617–1659', *Grotiana*, 34 (2013), pp. 138–61. One will also find reflections on the context and reception in the literature listed under Grotius in note 2 above. Without going deeper into the question, it is worth mentioning that the first reception of *De imperio* bears witness to the complexities in Grotius's position I want to highlight. As Barducci shows, in the English reception of *De imperio*—by far the most important of a book the impact of which was otherwise seriously impaired by its late, posthumous publication—the work had remarkably broad appeal among all major factions in the controversies about church and state. This broad, indeed conflicted, reception is deeply symptomatic of a work that does not fit comfortably into the category of a 'standard natural rights Erastianism'.

1. Directive rule
 - 1.1. Persuasive (no obligation, no coercion)
 - 1.2. Declarative (indirect obligation, no coercion)
2. Constitutive rule
 - 2.1. Consensual (indirect obligation, coercion)
 - 2.2. Imperative
 - 2.2.1. Sovereign power (obligation, coercion)
 - 2.2.2. Below the sovereign power
 - 2.2.2.1. By emanation (obligation, coercion)
 - 2.2.2.2. By mere subordination (obligation, coercion)

In this section, we shall look at church and state in the context of the second main category of rule, constitutive rule, which is mostly concerned with the attribution of sovereign power and command. In the following section, we shall then return to the first main category, directive rule, which is mostly concerned with political counsel, including ecclesiastical counsel.

The rule of the sovereign power, i.e. the governing authorities of the state, is constitutive and imperative. *Constitutive* means that it is determining, established by decree, and enforced by constraint or coercion. *Imperative* means that it expressed in the form of command and carries direct obligation, as opposed to the indirect obligation stemming from consensual rule which imposes obligation only via common agreement.²¹ Apart from the government itself which holds sovereign power, the coercive power that comes with constitutive rule can also be detained by government agents to whom such power is delegated by ‘emanation’, i.e. civil servants or public officers acting on behalf of the sovereign powers or what Grotius calls ‘deputies’.²² There is only one exception where imperative rule does not emanate from the sovereign power, albeit it remains subordinate to it. It concerns family economy: parents wield imperative rule over their children prior to and independently of the state. However, in order to avoid ‘conflicting obligations’ or ‘constraint with respect to the same thing’, ‘God wanted paternal authority [*paternum imperium*], which is the oldest form, to give place to civil authority [*civili imperio*] and become subject to it’.²³

In *De imperio*, Grotius’s principal aim is to show how, outside family economy and putting to one side complications regarding consensual rule that need not concern us here, constitutive rule and the coercive power that comes with it pertain only to the state, i.e. to the sovereign power or the deputies acting on its behalf. This also applies to the church: it is subordinated and subjected to state authority and detains none of the coercive power which is the hallmark of constitutive rule: ‘All use of compulsion is denied [pastors]’²⁴ and ‘no jurisdiction naturally belongs to priests, that is no coercive or imperative judgement, since their whole function by its nature includes no such thing’.²⁵

In chapter XII, after lamenting the credulity of those ancient emperors and kings who ‘thought it safe to entrust men who were most experienced in sacred matters and to whom God had entrusted pastoral rule, that other kind of rule, which has authority [*imperio*] as its source, as well’, Grotius goes on to ‘exhort those men who find it unbearable that pastors are called deputies of the sovereign powers in any respect to finally depose this error’.²⁶ His aim

²¹ The adjective *imperativum*, given by Van Dam as ‘imperative’, should thus be seen as cognate to the noun *imperium*, i.e. ‘authority’, and the verb *imperare*, i.e. ‘to lead’.

²² Grotius, *De imperio*, vol. I, chap. II, pp. 186–7.

²³ *Ibid.*, chap. I, pp. 160–1; modified, Van Dam has ‘civil sovereignty’ for *civili imperio*.

²⁴ *Ibid.*, chap. IV, pp. 250–1.

²⁵ *Ibid.*, chap. IX, pp. 397–9.

²⁶ *Ibid.*, chap. XII, pp. 610–1.

in these passages is to reject the notion that pastors can be granted constitutive rule and coercive power independently of the state, i.e. to reject what Wtenbogaert described as ‘collaterality’. *If* pastors hold constitutive rule it can only be in a capacity as deputies or state agents and not independently of the state:

So people who put great effort into proving that pastors are not deputies of the sovereign powers are fighting against their own shadow: for who could be so ignorant as not to know that? ... But if these pastors receive some authority or jurisdiction [*imperii aut iurisdictionis*] besides [*praeter*] their pastoral office, they may rightly be called deputies or delegates of the sovereign powers [*summarum potestatum*], in virtue of this additional [authority or jurisdiction] [*accessionis*].²⁷

As Grotius indicates here, individuals who just happen to be pastors can—but, as we shall see shortly, in fact most often should not—assume a function as deputies to the sovereign power in addition to their pastoral function. But when considered in their pastoral function alone, such individuals occupy no such office: ‘pastors as such are subject, but not deputy’.²⁸

Conversely, the sovereign power is not a head priest or ‘sovereign prophet’ as Hobbes calls it.²⁹ For Grotius, the ‘secular authority is distinct from the religious function’.³⁰ Certainly, he concedes, ‘by natural law the same person may hold the sovereign authority [*summum imperium*] and the priesthood What is more, up to a point it is natural that the same man is king and priest [*rex et sacerdos*]’.³¹ It is, in principle, entirely appropriate for a sovereign to also consider himself a pastor among pastors. And yet, in practice, since ‘the charge of kingdom ... is both lasting and extremely heavy’, there ‘are reasons why the same man should not take upon him both functions’ since ‘both functions cannot conveniently and suitably be sustained by one man; worse, we shall see him frivolously leap from one function to the other’.³²

Moreover, since the pastoral function as such does not pertain to the state, pastors are not appointed by the state. In the ‘institution’ of the clergy, Grotius thus distinguishes between these four: (1) a *mandate*, defined as ‘the actual faculty of preaching and handling the sacraments and the keys’; (2) *ordination*, which is the ‘application of this faculty to a particular person’; (3) *election*, or the ‘application of this person to a particular congregation and place’; (4) *confirmation*, which is ‘the right by which a particular person exercises the ministry in a particular place with public protection’.³³ Grotius here leaves the *ordination* of pastors to the church, by the laying of hands.³⁴ In itself, this pastoral function is however unrelated to any specific place of exercise (by analogy to the itinerant apostles).³⁵ As for the *election* of pastors to particular churches, Grotius allows that this also generally is a church matter, although he stresses that a prerogative of the sovereign powers exists in case of excess

²⁷ *Ibid.*, chap. II, p. 186–7; translation modified. Van Dam has ‘supreme authorities’ for *summa potestates* and ‘increase’ for *accessio*.

²⁸ *Ibid.*, chap. II, pp. 186–7.

²⁹ Hobbes, *Leviathan*, chap. XXXVI, pp. 668, 676; chap. XLI, p. 764; see also Fukuoka, *The Sovereign and the Prophets*, pp. 80, 108–9, 256, 260–2.

³⁰ Grotius, *De imperio*, vol. I, chap. II, pp. 198–9.

³¹ *Ibid.*, chap. II, pp. 188–9.

³² *Ibid.*, chap. II, pp. 198–9.

³³ *Ibid.*, chap. X, pp. 450–1.

³⁴ *Ibid.*, chap. X, pp. 454–5 (translation modified): ‘So ordaining pastors is the task of pastors. This duty is not theirs as pastors of this or that church, but as servants of the universal church’. See also chap. X, pp. 512–3. On the ‘universal church’, see note 98 below.

³⁵ *Ibid.*, chap. X, pp. 452–5.

and abuse.³⁶ However, he firmly asserts the right of the civil authorities with regard to the *confirmation* of pastors, which is associated with the right to state funding, use of public buildings, and protection. In sum, Grotius allows that the church has an independent and inalienable right to ordain pastors and a natural but not inalienable right to settle them where it will, but no guarantee of state protection or funding.

The basic model is not exactly that of a state church, even less a civil religion. It corresponds on the whole to the status of ‘public’ or ‘privileged’ church acquired by the Calvinist church since The Great Revolt: it was privileged and enjoyed the support of the state, financial and otherwise; still, it was not subject to the control of civil government but doctrinally and, to some extent, institutionally independent.³⁷ In this respect, Grotius’s position is merely descriptive and a reflection of the specific position occupied by the Dutch Reformed Church in the young republic. His position on the ordination of pastors, for example, differs significantly from the otherwise comparable model later conceived by Hobbes in the monarchical-Anglican context of mid-seventeenth century England where the ordination of pastors is placed firmly in the sovereign’s hands.³⁸ A couple of additional remarks about how the argument is contextually situated are however in order.

First, Grotius’s position obviously inclines toward the interpretation of the church’s ‘public’ status characteristic of the thinkers and advisors around Oldenbarnevelt. He rejects the construction favoured by the orthodox Calvinists, perhaps best expressed by article XXXVI of the *Belgic Confession* (orig. 1561; revision of Dort, 1619) according to which the office of the magistrate is not only to watch over the republic but also to ‘maintain the sacred ministry, to remove and ruin every idolatry and false service of God; to destroy the kingdom of the anti-Christ and to advance the kingdom of Jesus Christ, to have the word of the Gospel preached everywhere so that God may be honoured and served by all, as required by his word’.³⁹ While Grotius recognizes the state’s responsibility in advancing true religion, giving the church ‘public’ status is definitely not a question of putting the state in the service of the

³⁶ *Ibid.*, chap. X, pp. 456–9; see also Grotius, *Ordinum pietas*, p. 201.

³⁷ On the ‘public church’ and how it evolved in the Netherlands during the seventeenth century, see Benjamin Kaplan, *Divided by Faith. Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge, Mass., 2007), pp. 172–83; Christine Kooi, ‘Religious Tolerance’, in *The Cambridge Companion to the Dutch Golden Age*, ed. H. J. H. and G. H. Janssen (Cambridge, 2018), pp. 208–13; J. L. Price, *Dutch Culture in the Golden Age* (London, 2011), pp. 185–200; Jonathan Israel, *The Dutch Republic. Its Rise, Greatness, and Fall, 1477–1806* (Oxford, 1995), p. 372.

³⁸ For Hobbes, see *Leviathan*, chap. XLII, p. 389: ‘who are lawfully ordained, that are not ordained by the Sovereign Pastor? And who is ordained by the Sovereign Pastor in Christian Common-wealth, that is not ordained by the authority of the Sovereign thereof?’; and *Leviathan*, chap. XLII, p. 394: ‘Kings ... may ... Ordaine, and Deprive Bishops, as they shall thinke fit, for the well governing of their Subjects’. The argument is specific for *Leviathan*. In *De Cive*, Hobbes claims that, in a Christian Commonwealth, ‘the holder of sovereign power in the commonwealth is obliged to interpret scripture ... by means of duly ordained *Ecclesiastics*’ and that the ‘Saviour promised this Infallibility (in matters essential to salvation) ... to the Apostles and to the Pastors who were to be consecrated by the Apostles in succession by the laying of hands’ (Thomas Hobbes, *On the Citizen*, ed. and trans. by R. Tuck and M. Silverthorne (Cambridge, 1998), chap. XVII, § 28, p. 233). Richard Tuck has suggested that Hobbes’s argument here leaves an opening for Presbyterianism (Richard Tuck, ‘Hobbes, Conscience, and Christianity’, in *The Oxford Handbook of Hobbes*, ed. A. P. Martinech and K. Hoekstra (Oxford, 2016), pp. 481–90, esp. p. 489; Richard Tuck, ‘The Civil Religion of Thomas Hobbes’, in *Political Discourse in Early Modern Britain*, ed. N. Phillipson and Q. Skinner (Cambridge, 1993, pp. 120–38). The suggestion has been met with considerable resistance (see Lodi Nauta, ‘Hobbes on Religion and the Church of Ideas’, 63 (4) (2002), pp. 577–98; Collins, *The Allegiance*, pp. 91–2; Noel Malcolm, *Introduction*, in Hobbes, *Leviathan*, vol. I, pp. 40–1). For further discussion, see also Johann Sommerville, ‘Hobbes and Christian Belief’, in *Interpreting Hobbes’s Political Philosophy*, ed. by S. A. Lloyd (Cambridge, 2019), pp. 167–68.

³⁹ Guy de Brès, *La Confession de foi des églises réformées Walonnes et Flamandes* (Brussels, 1850), art. XXXVI, p. 36.

church. The status comes with obligations and restrictions for the church: if it wants to qualify for state funding and protection, it must submit to state control when it comes to the way that it physically invests the public landscape.

Second, Grotius's model does not preclude the possibility that other churches can be tolerated without such public status as long as they do not lay any claim to state funding, property, or protection; nor does it in principle preclude the possibility that more than one church or religion can apply for public status, although that latter option is never seriously envisaged. Admittedly, the scope of Grotius's own position is here somewhat limited by the particular historical circumstances of his writing. His most pressing theoretical problem in the late 1610s when writing *De imperio* was, as already in *Ordinum pietas*, to formulate a means to accommodate diverging views *within* the Dutch Reformed Church.⁴⁰ This was only to be expected given that, officially, the Reformed Church was the only religion allowed. In reality, however, authorities on the local level turned a blind eye to both private and semi-private practice of other cults, giving rise to the unique situation characteristic of the Dutch Republic, namely, as Christine Kooi puts it, 'a state with a privileged church but a multi-confessional population'.⁴¹ This situation was only exacerbated during the three decades it took before *De imperio* was finally published in 1647. And despite Grotius's more limited application of his model, the model itself does potentially suggest ways to politically better accommodate such a multi-confessional or even multi-religious situation: it contains conceptual openings toward several public churches and official toleration of non-public ones that a later, more radical Dutch reception—Spinoza in particular—shall only be too happy to revisit and exploit.⁴² In this respect, the model of church-state relations proposed by *De imperio* is not reducible to Grotius's own intentions in the original context of writing.⁴³

Grotius acknowledges that the public status of the church can imply that it acquires some coercive power:

in a public church both presbyteries and synods possess, besides their native right, a kind of extra right [*quoddam adventicium*] based on human law. According to this right they judge controversies, as do other bodies and assemblies created by the sovereign power, in such a way that their judgement has coercive force [*coactio*].⁴⁴

However—and this is the point that fundamentally separates Grotius's position from the 'collaterality' embraced by orthodox Calvinism—, in the event that a public church *is* vested with coercive force, it does not detain that force in virtue of being a *church*, but only in virtue of being *public*, that is to say, in virtue of the constitutive rule by emanation that it acquires to the extent that it is charged with administering certain aspects of sacred matters in the state on the sovereign power's behalf. Moreover, when it acquires public status and thus benefits from the support of the state, the church must adopt an internal organization that includes a mix of ecclesiastical pastors and non-ecclesiastical 'assessors' who can be—indeed, on Grotius's view, ought to be—politically appointed.

⁴⁰ See esp. Grotius, *Ordinum pietas*, pp. 170–1: "Because there are so many and such various, sometimes even very obscure, questions in theology, and because it is impossible, given the diversity of temperaments, that all can have the same opinion, if those who disagree on a not very serious point cannot live in one Church, then the Reformed will travel the same road as that paved by the excessive harshness of the Romanists, which caused the schism of the Protestants."

⁴¹ Kooi, 'Religious Toleration', p. 210.

⁴² See Lærke, *Spinoza and the Freedom of Philosophizing*, chap. 9 and 11.

⁴³ On this point, see also Lærke, 'La controverse de Grotius, Hobbes et Spinoza', pp. 408–12.

⁴⁴ Grotius, *De imperio*, vol. I, chap. VII, pp. 342–3.

The assessors represent Grotius's take on the Calvinist layman Elders. He insists that they must be distinguished from 'presbyters' who are pastors elected by the church by the laying of hands.⁴⁵ Assessors are not 'not instituted by Gods command'⁴⁶ but should be chosen among 'pious and learned men outside the circle of pastors'.⁴⁷ Grotius provides two main examples to illustrate their status. First, he refers to the Great Sanhedrin of the ancient Hebrew Republic, the council of seventy Elders, which Grotius argues was a single entity exercising both a political and an ecclesiastical function but was fundamentally political in nature.⁴⁸ The example speaks to the mixed nature of church government, including both ecclesiastical and secular members, and to the overall subordination of church government to state control. Second, and more importantly, Grotius notes how, in Geneva, following Calvin's *Ordonnances ecclésiastiques*, the Elders were elected by the 'petit conseil', a political entity, and not by the consistories as was custom in the Dutch Reformed Church.⁴⁹ Hence, while Grotius allows that 'both the supreme power and the church might lawfully appoint laymen as assessors to the priests',⁵⁰ he stresses how Calvin himself recommended the former rather than the latter kind of appointment.⁵¹

The question of who appoints assessors is important for two reasons. First, having politically appointed assessors prevents the church from degenerating into a self-appointed, closed faction within society, 'creating a state within the state' as Grotius already warns in *Ordinum pietas*.⁵² Second, it is important for the political oversight of the church because part of the assessors' role is to operate as government informers, as 'delegates who in [the sovereign power's] name mingle with the priests'.⁵³ For, as Grotius remarks, 'it is expedient for [the sovereign powers] to have their eyes and ears in the gatherings of pastors, to employ their services or investigating whether everything that happens agrees well enough with the faith and the law'.⁵⁴ His deep suspicion of the political ambitions of a public church is here on full display: 'many men ... come to the point where they believe that the sovereign powers have no part at all or a very small part in the church ... Thus an invention of human intelligence is opposed against God's dispensation, and into this almost twofold authority the seed of parties and factions is perpetually sown'.⁵⁵ In sum, then, Grotius envisages a mixed internal government of the public church that must include not only pastors and presbyters but also preferably politically appointed non-clerical assessors in order to ensure that the church does not become a faction threatening the unity of sovereignty and to maintain some political oversight of the internal deliberations within the church.

3. The Declarative Rule of Pastors

⁴⁵ *Ibid.*, chap. XI, pp. 588-91.

⁴⁶ *Ibid.*, chap. XI, pp. 572-3, 594-5.

⁴⁷ *Ibid.*, chap. XII, pp. 610-1.

⁴⁸ *Ibid.*, chap. XI, pp. 575-89, 596-7; see also the commentary by Van Dam in *De imperio*, vol. II, p. 864.

⁴⁹ Grotius, *De imperio*, vol. I, chap. XI, pp. 602-5. Calvin's *Ordonnances* were written in 1541, with a final revision by Calvin himself published in 1561. Grotius consulted a further revised version of 1576, overseen by Beza among others. He marked out article 68 which reads: 'Quant à la manière de les eslire [i.e. les Anciens], nous avons ordonné que le petit Conseil avise de nommer les propres qu'on pourra trouver, gens de bonne et honneste vie, sans reproche'. See also the commentary by Van Dam in *De imperio*, vol. II, pp. 870-1.

⁵⁰ Grotius, *De imperio*, vol. I, chap. XI, summarium, pp. 524-5; see also chap. XI, pp. 594-5.

⁵¹ For a similar point, see Grotius, *Ordinum pietas*, p. 201.

⁵² Grotius, *Ordinum pietas*, p. 227.

⁵³ Grotius, *De imperio*, vol. I, chap. XI, pp. 596-7.

⁵⁴ *Ibid.*, chap. XI, pp. 600-1.

⁵⁵ *Ibid.*, chap. XI, pp. 602-3.

Up to this point, Grotius seems mostly to have clipped the wings of the church, both externally in relation to the state and internally in relation to its organization. Pastors do, however, have an additional role to play in relation to the sovereign which, at the same time, places them at the heart of power and outside its constitutive structures, namely as ecclesiastical counsellors. For, as Grotius writes, ‘rulers are wise by associating with wise men’ and ‘if this is true in profane matter, how much more true is it in sacred matters, where it is very dangerous to err’.⁵⁶

What kind of rule over the civil authorities does this curious concession afford the clergy? We here have to turn to the first main category in Grotius’s general classification of kinds of ‘rule’ schematised above, namely *directive rule*. Generally, in the political realm, directive rule in consists in ‘showing what is virtuous or what is necessary for the public good’.⁵⁷ It involves no power to enforce a judgement on the part of the ruler but only guidance toward better judgement by the person ruled; it can heeded or dispensed with by the latter at will. Ecclesiastical counsellors exert such directive rule over a sovereign who consults with them. Moreover, what goes for individual ecclesiastical counsellors also goes for collective ecclesiastical councils, i.e. synods. Hence, ‘a synod is not assembled because it has some official power. Its end is ... to offer advice to the ruler in order to advance truth and piety, that is, to lead the way by their directive judgement’.⁵⁸ But a synod cannot, in and by itself, constrain the civil authorities to judge one way or the other: ‘If a synod merely gives advice about things to be done by the sovereign power itself, it is certain that a judgement by him who receives the advice must follow’.⁵⁹

At first sight, Grotius’s argument seems to correspond to a fairly straightforward Erastian position affording the clergy only an advisory function in relation to the sovereign. This advice can always be overruled or ignored by the latter who alone detains judgement over sacred matters. Conceptually, Grotius’s position appears comparable to that of Hobbes, for whom a sovereign can take as counsellors—including ecclesiastical counsellors—whomever he wishes and dismiss them as soon as he does not like the counsel they provide. As Hobbes writes in *Leviathan*, ‘is annexed to the Sovereignty, the choosing of all Counsellors, Minister, Magistrates, and Officers’,⁶⁰ so that ‘a Monarch receiveth counsel of whom, when, and where he pleaseth; and consequently may heare the opinion of men versed in the matter about which he deliberates, of what rank or quality soever, and as long before the time of action, and with as much secrecy, as he will’.⁶¹ So is this the kind of view Grotius also took on ecclesiastical counsel? In reality, matters are more complicated. We must consider *what kind of directive rule* it is that Grotius grants ecclesiastical counsellors, namely ‘declarative rule’ which he distinguishes from ‘persuasive rule’. Persuasive rule is a weak form of directive rule whose force depends on the counsellor’s ‘person’ alone, that is to say, on his perceived persuasiveness and trustworthiness. Declarative rule, by contrast, is a much stronger form of directive rule whose force is associated with the counsellor’s knowledge of necessary consequences. And *this* kind of directive rule is not so easy to dismiss, even for a sovereign.

To get a better grasp of these distinctions we must take a step back and return to the very foundations of Grotius’s theory of *ius circa sacra*. Regardless of their mutual relations of supremacy and subordination, the civil authorities and the clergy are ultimately and equally

⁵⁶ Grotius, *De imperio*, chap. VI, pp. 292–3.

⁵⁷ *Ibid.*, chap. IV, pp. 246–7.

⁵⁸ *Ibid.*, chap. VII, pp. 340–1.

⁵⁹ Grotius, *De imperio*, chap. VII, pp. 362–3; modified. Van Dam has ‘himself’ for ‘itself’.

⁶⁰ *Ibid.*, chap. XVIII, pp. 126–7.

⁶¹ *Ibid.*, chap. XIX, p. 130–1; see also chap. XXIII, pp. 170–1.

submitted to God and thus subject to divine law.⁶² Both state and church are under the obligation to advance the kingdom of God. They do, however, not fulfil the same function in relation to God's work on Earth. A sovereign is a 'deputy' (*vicarius*) of Christ with regard to so-called intermediate actions concerning outward man while a pastor is a 'servant' (*minister*) with regard to intermediate actions concerning inward man.⁶³ What is the difference?

First, Grotius reproduces some commonplace distinction according to which the state is concerned with public action and the church with private matters of conscience. However, unlike someone like Hobbes who radically separates internal belief from external worship,⁶⁴ Grotius does not see these two domains as entirely distinct. For even if 'words rather than thought are controlled in sacred matters'⁶⁵ and 'external actions are the primary object of human authority',⁶⁶ internal actions are still a secondary object of such control because they 'come under human authority if they are combined with external matters'.⁶⁷ Internal actions can be subject to state control in a secondary manner 'by design of the ruler or indirectly'. They can be so by design to the extent that 'intentions are taken into account in the judgement of offences'; they can be so indirectly to the extent that, when a certain act is pronounced illegal, 'it is also illegal to think of undertaking such an action' because 'no one can in honesty wish to do what it is dishonest to do'.⁶⁸ As a result of this, Grotius must acknowledge that the two domains—inward and outward—spill into one another: sovereign rule concerning outward man affects man inwardly; pastoral rule concerning inward man produces outward effects or actions. Indeed, we will not do credit to the coherence of Grotius's overall model if we consider the distinction between inward pastoral rule and outward sovereign rule to be fundamental, for he does as much to tear it down as he does to build it up.⁶⁹

⁶² Grotius, *De imperio*, vol. I, chap. V, pp. 262–3.

⁶³ Grotius opposes 'intermediate' (*mediae*) actions to actions 'at the ends' (*terminales*), where the latter concern initial principles (laws) and the ultimate ends (judgement), whereas the former are merely instrumental with regard to the implementation of those principles and the realization of those ends (see Grotius, *De imperio*, vol. I, chap. IV, pp. 243–4).

⁶⁴ See Hobbes, *Leviathan*, chap. XLII, p. 822: 'internall faith is in its own nature invisible, and consequently exempted from all humane jurisdiction; whereas the words, and actions that proceed from it, as breaches of our Civil obedience, are injustice both before God and Man'. Using a similar distinction, Hobbes argues in *De Cive* that one is an obedient citizen 'even if one does not inwardly believe all that is set forth by the church', provided that one 'desires to believe it, and makes external profession whenever necessary' (Hobbes, *On the Citizen*, chap. XVII, § 14, p. 246). While commenting on *De Cive* in a 1643 letter to his brother, presumably referring to this passage, Grotius writes: 'I cannot approve. ... For example, he thinks it is the duty of each private individual to follow the official religion of his country—if not with internal assent, then at least with outward observance' (Letter of 11 April 1643, in *Briefwisseling van Hugo Grotius* at <http://grotius.huygens.knaw.nl/letters/6166/>, trans. in Malcolm, *Aspects of Hobbes*, p. 473).

⁶⁵ Grotius, *De imperio*, vol. I, chap. III, pp. 216–7.

⁶⁶ *Ibid.*, chap. III, pp. 206–7.

⁶⁷ *Ibid.*, chap. III, pp. 218–9.

⁶⁸ *Ibid.*, chap. III, pp. 206–7.

⁶⁹ This is one point where Spinoza, who owned a copy of the 1648 edition of *De imperio*, may have learned from Grotius. Spinoza argues in *Theological-Political Treatise* that, unless we are subjected to violence, the exercise of our internal power of judgement is always accompanied by its external expression because 'not even the wisest know how to keep quiet, not to mention ordinary people'. For this reason, he considers certain mere thoughts—such as thinking that one should not keep one's promises—to be condemnable 'by the very fact that [one] thinks such a thing', but not 'so much because of the judgment and opinion as because of the action such judgments involve' (chap. XX, p. 345 and p. 348). As in Grotius, the domain of internal thought always spills into the domain of external action. By contrast, both Hobbes and Dutch Hobbesians in Spinoza's immediate context such as Lucius Antistius Constans (pseud.) were operating with more clear-cut separations of internal faith from external profession. For Hobbes's distinction between internal faith and external profession, see *Leviathan*, chap. XLII, p. 822 and p. 894. For his distinction—slightly dissymmetrical in relation to the distinction between internal faith and profession—between private and public worship, see *Leviathan*, chap. XXXI, p. 564. For a version of the same distinctions—but here perfectly symmetrical—, see Lucius

Second, and more importantly, Grotius distinguishes a sovereign and a pastor in terms of the action they each perform in their respective functions as deputy and servant of God. A deputy ‘produces actions of the same kind as the person for whom he deputizes, but less perfectly’.⁷⁰ God has delegated his powers of outward government to the sovereign and the latter acts as a deputy of God. This means that the sovereign acts as an extension of God: his actions just *are* God’s actions by delegation or emanation. A *servant*, by contrast, ‘produces actions which are not of the same kind, but which are subordinate to the actions of the principal source’.⁷¹ This is how the clergy relates to God. With regard to the implementation of God’s will and the regulation of man’s inward action, the church is only said to perform the actions of God ‘metaphorically, for example when pastors are said to ‘save men’, ‘to remit sins or not’’.⁷² Pastors save no one. They only facilitate God’s salutary action as operated through Jesus Christ. For the operation of Christ *within* man consists in illumination, opening of the heart, forgiveness, salvation, and remittance of sins, all internal actions that it is not within the power of pastors to perform directly, even in lesser degree, but which they can only provide guidance towards by means of *other* actions. Within man’s religious conscience, God always operates himself and not by delegation. Pastors do not perform divine operations. They assist God in performing them by means of other, subordinate actions, thus helping bring about the work of God internally in the heart of each member of their congregation, but without themselves doing that work.⁷³

Now, one important way that pastors thus ‘serve’ God is by preaching God’s word, communicating the divine law to the faithful, a general mission that also includes whatever religious counsel or direction they provide to the sovereign power. Pastors are charged with communicating, without contributing or adding to it, the divine law to the sovereign power. It is in this capacity that Grotius maintains that pastors have declarative rule over the sovereign power. It is merely directive: it consists in counsel, not command. However, contrary to the other kind of directive rule, i.e. persuasive rule, it is not really optional. It comes with an obligation. It is a directive rule which, like the constitutive rule of sovereigns and parents, ‘takes away the freedom of action of the person in question’.⁷⁴ In sum, by communicating God’s word, pastors give advice that the even a sovereign is not free to ignore.

How should we understand this curious directive, yet obligatory form of rule more precisely? Grotius frequently takes recourse to ‘examples from other spheres of life’ in order to explain and clarify the models he deploy and this is also the case here.⁷⁵ Throughout *De imperio*, he frequently appeals to a commonplace analogy between a pastor and a physician. The analogy first occurs at the beginning of chapter IV:

The medical office comes from God the creator of nature, as the pastoral office comes from God the author of grace; the physician receives the chief rules of his practice from nature and experience, not from the sovereign powers, nor does he deputize for

Antistius Constans [pseud.], see *De Jure Ecclesiasticorum, Liber Singularis* (Alethopoli, 1665). According to Constans, ‘the *external religion*, performed by the body alone, is, just as every other action of our body, subjected to the power of others’, but ‘the *interior religion*, and man insofar as he honors the great and good God from the sole decision of his soul, benefits from divine freedom’ (*De Jure Ecclesiasticorum*, chap. IV, p. 57; see also chap. VIII, pp. 115–9). For further discussion, see Lærke, *Spinoza and the Freedom of Philosophizing*, chap. 11.

⁷⁰ Grotius, *De imperio*, vol. I, chap. IV, pp. 244–5.

⁷¹ *Ibid.*, chap. IV, pp. 244–5.

⁷² *Ibid.*, chap. IV, pp. 244–5.

⁷³ *Ibid.*, chap. IV, pp. 244–5.

⁷⁴ *Ibid.*, chap. IV, pp. 246–7.

⁷⁵ *Ibid.*, chap. IV, pp. 236–7.

the sovereign power in practicing medicine. Nonetheless the medical office is subject to the authority [*imperio*] of the sovereign powers.⁷⁶

Here, the analogy mostly serves to stress how the independence of the pastoral office does not dispense the church from obedience, or that ‘divine prescription of duties’ cannot be ‘used against the force of authority [*contra vim imperii*]’.⁷⁷ Grotius also sometimes uses the analogy much in the same way as Marsilius of Padua in the *Defensor Pacis*, namely to establish that ecclesiastical counsel carries no coercive power in itself.⁷⁸ In this application, it serves the purpose of stripping the clergy of political power and vesting all constitutive rule in the sovereign power. It contributes to *De imperio*’s principal argument by ensuring that ‘the authority of the sovereign powers in sacred matters is not taken away by the directive and declarative rule of the pastors’.⁷⁹

The analogy does, however, play yet a third and more positive role in Grotius’s explanation of declarative rule later in chapter IV:

Declarative rule itself does not effect an obligation, but it gives rise to one because those who rule in this way impress something upon someone which brings about or increases an obligation: for example, a physician rules a sick man by showing him what is fatal and what is necessary to restore or retain his health; when the sick man has understood that, he is bound to do this and avoid that, not by any right that physician holds over him, but by virtue of the law of nature which imposes on everyone the care for his own life and safety.⁸⁰

Once a physician’s sound medical advice has been properly understood by the patient, the latter is *bound* or *obliged* to follow it in virtue of the law of nature:

Someone who is ill does well to take a medicine prescribed by a physician of good reputation: when his health is in danger he is *even obliged* to follow the counsels of

⁷⁶ *Ibid.*, chap. IV, pp. 236–7.

⁷⁷ *Ibid.*, chap. IV, pp. 236–7; modified. Van Dam has ‘control’ for *vis*.

⁷⁸ See Marsilius, *The Defender of the Peace*, ed. and trans. A. Brett (Cambridge, 2005), pp. 220–1: ‘Now analogously with human law there is another judge in accordance with gospel scripture, who is a judge in the first signification: sc. the priest, who is a teacher in this world of the divine law and of the commands it contains of what is to be done or avoided in order to achieve eternal life and escape penalty, but who nevertheless has no coercive power in this world to constrain anyone to the observance of the things it commands. ... And so we can appropriately liken this judge to a physician, who has been given the authority of teaching and commanding and making a prognosis or judgement about those things that are useful to be done or omitted in order to achieve bodily health and escape death or illness’. See also Aristotle, *Politics*, in *The Complete Aristotle. The Revised Oxford Translation*, ed. J. Barnes (Princeton, 1995 [6th printing; one volume digital edition]), Book VII, 1324^b: ‘a physician is not expected to persuade or coerce his patients’; Aristotle, *Metaphysics*, ed. Barnes, 1010^b1: ‘surely the opinion of the physician and that of the ignorant man are not equally weighty, for instance, on the question whether a man will get well or not’.

⁷⁹ Grotius, *De imperio*, vol. I, chap. IV, Summarium, pp. 234–5. The analogy will later be systematically mobilised by John Selden in his 1689 *Table Talk*: ‘The Condition of the Clergy towards their Prince, and the Condition of the Physician in all one; the Physicians tell the Prince they have Agarick and Rhubarb, good for him and good for his Subjects’ Bodies; upon this he gives them leave to use it; but if it prove naught, then away with it, they shall use it no more’ (John Selden, *Table Talk: Being the Discourses of John Selden, Esq. Being His Sense of various Matters of Weight and high Consequence; relating especially to Religion and State* [London, 1689], disc. XII, p. 29).

⁸⁰ *Ibid.*, chap. IV, pp. 246–7.

physicians, if he himself lacks the perception of knowledge to draw a firm conclusion from natural principles.⁸¹

The obligation entailed by the physician's directives is not based on possible *coercion*. The physician cannot force the patient to do anything. The obligation is effected by *knowledge*: learning about the true nature of his illness will necessarily prompt the patient to heed the physician's advice for the sake of his own self-preservation. It is an obligation ultimately grounded in the physician's presumed competence, his knowledge of the natural consequences of a given medical condition. This epistemically grounded power to oblige explains why declarative rule 'takes away the freedom' of the person to whom something is declared.

Grotius goes on to grant both philosophers and pastors this kind of rule in relation to the sovereign powers: 'a counsellor rules over a king by persuasion, someone skilled in natural law rules over him by declaring natural law, a physician and a pastor in both ways'⁸²; 'philosophers direct moral and political life by showing what is virtuous or what it necessary for the public good'⁸³; and pastors are 'giving counsel and declaring what God commands'.⁸⁴ It is important, however, to stress that the declarative rule of pastors does not rest upon their status as pastors as such, i.e. the fact that they are *ordained*. It rests upon a presumption of their epistemic competence, i.e. the fact that 'Pastors and others ... are thoroughly trained in Scripture'. For, as Grotius continues, referencing Aristotle, 'each man judges correctly those matters with which he is acquainted; it is of these that he is the most competent critic'.⁸⁵ This provides an opening towards lay scholars such as Grotius himself who are thus not excluded from having declarative rule in sacred matters despite their lack of ecclesiastical ordination, since 'training in Scripture' is all that matters.

Grotius's medical analogy is, in its numerous applications, not perfect. Most importantly, the kind of law that a pastor is assumed to declare is not exactly of the same order as the law declared by a physician. The declarative rule of a physician pertains to natural law. What pastors ostensibly declare, however, pertains not only to natural law but to divine law generally which includes not only natural law but also, and most importantly, positive divine law. Let me briefly recall the distinction. According to *De imperio*, God commands through two kinds of law: natural law and positive divine law which form two separate parts of divine law.⁸⁶ Natural law defines those things which 'are necessary or forbidden by their nature'.⁸⁷ Grotius cautions that, in this context, we should not oppose the

⁸¹ Grotius, *De imperio*, vol. I, chap. VI, pp. 292–3; my italics.

⁸² *Ibid.*, chap. IV, pp. 258–9.

⁸³ *Ibid.*, chap. IV, pp. 246–7.

⁸⁴ *Ibid.*, chap. IV, pp. 256–7.

⁸⁵ *Ibid.*, chap. V, pp. 266–7. For Aristotle, see *Nicomachean Ethics*, ed. Barnes, 1094^b27–1095^a1: 'Now each man judges well the things he knows, and of these he is a good judge. And so the man who has been educated in a subject is a good judge of that subject, and the man who has received an all-round education is a good judge in general'. Gottfried Wilhelm Leibniz later developed a model of church-state relations entirely based on a juridical logic of presumptions, among other things justifying some ecclesiastical authority over sovereign powers by reference to a presumption of piety. See Mogens Lærke, 'Leibniz on State and Church: Presumptive Logic and Perplexing Cases', *Journal of the History of Philosophy*, 56 (4) (2018), pp. 643–8.

⁸⁶ *Ibid.*, chap. III, pp. 208–9: 'for [the sovereign power] only two actions are defined: those which are forbidden by their very nature, and actions which are made so by divine authority. Actions of the first kind come under natural law Actions of the second kind come under divine positive law'; and *De imperio*, III, pp. 210–1: 'Two kinds of things are determined by divine law (I include natural law herein)'. On this point, I cannot agree with Charles W. A. Prior when he claims that, in *De imperio*, 'Grotius argued that 'divine positive law' amounted to a species of natural law for the governance of religion' ('The Highest Powers', p. 103).

⁸⁷ Grotius, *De imperio*, vol. I, chap. III, pp. 208–9.

natural to the *supernatural* but to the *arbitrary*.⁸⁸ Natural law commands not only ‘actions arising out of principles known to us’ but includes all actions that arise in a ‘fixed and definite way’, regardless of whether their principles are natural or supernatural and unknown.⁸⁹ What matters for natural law is that it is grounded in the nature of things, be it naturally or supernaturally. Divine positive law, on the contrary, is arbitrary in the sense of being posited and not necessitated by things themselves. Moreover, its range of application differs. Some laws apply to individuals, some to particular peoples, yet others to all of mankind. Some apply only temporarily, others are permanent. These differences between natural and positive law do, however, not change anything about the kind of directive rule that those who have knowledge of these laws will have, or about the fact that this rule must be declarative and thus carry obligation.

Given that declarative rule is a species of directive rule, such obligation could at first seem to involve contradiction in relation to Grotius’s frequently reiterated claim that ‘no one is obliged to follow anyone’s directive judgement’.⁹⁰ And yet there is none. This is because, when heeding the declarative judgement of a pastor, a sovereign follows not so much the person who declares the judgement, i.e. the pastor, as the one *for whom* the pastor declares it, i.e. God. For, as will be recalled, a pastor is a servant (*minister*) and not a deputy (*vicarius*). In declaring divine law, he does not act on behalf of God or execute his law. He only facilitates the execution of divine law through his ministry and counsel. It is God who executes divine law; the pastor simply serves God in communicating or declaring what that law consists in. Consequently, the obligation associated with such declaration does not emanate from the ecclesiastical counsellor, but directly from God whose law he declares. Or, as Grotius puts it succinctly: ‘The priest declares, God compels [*Denuntiat sacerdos, cogit Deus*]’.⁹¹

In sum, the declarative rule of pastors comes with a power of obligation, certainly indirect and non-coercive, but still an obligation, and indeed the strongest obligation there is, namely an obligation toward *God* and divine law. For, as Grotius affirms, ‘to divine authority we must simply give way in all things, there is no doubt of that. Thus Abraham was obliged to judge that he should sacrifice his son, Noah was obliged to believe in the coming of the flood’.⁹² Everyone, including a sovereign, is bound to follow divine command, no matter how and by whom it is declared, for ‘the absolutely sovereign judgement of all is that of the absolutely sovereign leader, that is, God’.⁹³ And Grotius seems, at least in principle, to grant that, when worthy of the name, pastors have privileged access to divine law, both natural and

⁸⁸ *Ibid.*, chap. III, pp. 208–9.

⁸⁹ *Ibid.*, chap. III, pp. 208–9. He exemplifies a supernatural principle with the existence of Trinity and the ensuing duty to worship the Father, the Son and the Holy Ghost as the one true God—the will to demarcate himself explicitly from Unitarianism and Socinianism is here clearly in view.

⁹⁰ *Ibid.*, chap. VI, pp. 294–5; see also chap. VI, pp. 296–7: ‘[N]obody is utterly bound [*praecise obligatus*] to follow someone’s directive judgement, since he is, of course, free to do his own investigations and to try to reach a firm knowledge of truth’ and ‘in the case of saving faith nobody can safely give in to [*acquiescere*] another’s directive judgement’.

⁹¹ *Ibid.*, chap. IX, pp. 430–1. Commentators have not been particularly attentive to these differences between the forms of directive rule in Grotius, often to the effect that his position on ecclesiastical counsel has been reduced to a position similar to Hobbes’s. Marco Barducci, for example, notes that ‘Grotius demonstrated that Scripture assigned to the pastors, in the same manner as it did to physicians and philosophers, a mere “declarative” rule consisting of persuading and counselling’ that carried no ‘power to oblige’, and argues that ‘pastors exercised a “persuasive rule” which consisted in “giving counsel and declaring what God commands”’ (Barducci, *Hugo Grotius and the Century of Revolution*, pp. 89, 92). Within Grotius’s classification, when declarative rule is thus reduced to persuasive rule, it loses the direct reference to divine law and the crucial quality of obligation along with it, and is mistakenly conceived as a kind of rule that can be freely ignored.

⁹² Grotius, *De imperio*, vol. I, chap. VI, pp. 292–3.

⁹³ *Ibid.*, chap. V, pp. 262–3; translation modified. Van Dam has: ‘the supreme judgement of all is that of the supreme ruler of all, that is God’.

positive, and that they will declare it accordingly. This ‘authority’ of the pastors is what I shall now turn to.

4. The *Auctoritas* of Ecclesiastical Counsellors

In his recent book, Barducci situates Grotius very close to Hobbes in relation to the traditional debate regarding the *iudex controversiarum*, i.e. the authority to interpret Holy Scripture. For Hobbes, the judge of controversies is the civil sovereign.⁹⁴ Similarly, in chapter V of *De imperio*, Grotius assigns the ‘imperative judgement’ over sacred matters to the sovereign power. Consequently, as we have already seen, it is only on account of an ‘extra right’ based on ‘human law’ that presbyteries and synods ‘judge controversies [*iure de controversiis*], as do other bodies and assemblies created by the sovereign power, in such a way that their judgement has coercive force’.⁹⁵ For this reason, Barducci attributes to Grotius and Hobbes a ‘shared ... view of the right of the sovereign magistrate to interpret Scripture’.⁹⁶ For Hobbes, however, that right is absolute to the extent that the sovereign is the ‘sovereign prophet’. In that capacity, the sovereign will is, on grounds that are purely voluntarist, the principal criterion of distinguishing true from false renderings of scriptural truth.⁹⁷ But this is clearly *not* Grotius’s position:

Pastors and others who are thoroughly trained in Scripture, also the gatherings of churches, but most of all and in the most august manner the universal church [*ecclesiae catholicae*] have a right to judgement in sacred matters. For *each man judges correctly those matters with which he is acquainted; it is of these that he is the most competent critic*, according to Aristotle. But this kind of judgement is different from what we are discussing here [i.e. the imperative judgement of the sovereign powers], for it either only precedes our own actions or also the actions of others, but, as we have said, as a directive, not as an imperative judgement. When the kind of judgement is different, just as when the kind of rule is different, the same persons may alternately be superior and inferior [*mutuo praesse et subesse*], as a physician to a king and a king to a physician. Therefore it is not absurd that two sovereign judgements exist, of different kinds, for instance the directive judgement of the universal church [*ecclesiae catholicae*] and the imperative judgement of the sovereign powers. For no judgement among men has more weight [*auctoritate*] than the former and no judgement among men has more power [*potestate*] than the latter.⁹⁸

The passage is baffling for several reasons. First, the concession that ‘the universal church [has] a right to judgement in sacred matters’ deals a blow to Grotius’s reputation as a ‘standard natural rights Erastian’. Moreover, the point is exacerbated by the clear allusion to declarative rule by means of the characteristic reference to the relation between the king and his physician. Finally, and most importantly, we find the astonishing assertion that ‘it is not

⁹⁴ See Hobbes, *Leviathan*, chap. XVIII, p. 274; chap. XX, p. 306.

⁹⁵ Grotius, *De imperio*, vol. I, chap. VII, pp. 342–3.

⁹⁶ Barducci, *Hugo Grotius and the Century of Revolution*, p. 108; see also p. 89.

⁹⁷ Hobbes, *Leviathan*, chap. XL, pp. 738, 744–6.

⁹⁸ Grotius, *De imperio*, vol. I, chap. V, pp. 266–7. Van Dam translates both occurrences of *ecclesia catholica* with a capitalised ‘Catholic Church’, thus implying that Grotius is referring to the Church of Rome alone. But I see no indication in the context that he is here speaking specifically about Roman Catholicism and he is clearly elaborating his own position. I thus believe we should understand ‘catholica’ in the original sense of ‘universal’ and have modified the translation accordingly.

absurd that two sovereign judgements exists’—an assertion that at first sight appears not only to seriously impair Grotius’s Erastian credentials but also to contradict his most basic conceptions about the indivisibility of sovereignty. This, of course, is not a conclusion we should embrace too hastily and a deeper analysis of the statements in context will quickly reveal that no contradiction exists. In reality, Grotius’s position does not involve any conflict between the imperatives tied to the sovereign power’s constitutive rule and the declarative rule of the clergy. The admission of two sovereign judgements in sacred matters is, instead, the effect of a fairly sophisticated conceptual setup which however only comes into view if we avoid associating Grotius too closely to Hobbes or any other radically Erastian doctrine according to which *all* obligations are, in the final analysis, subordinated to a unique and overarching obligation toward the civil sovereign.

So how does Grotius resolve the tension? In the long passage cited above, imperative judgement is associated with *power* (*potestas*). Power, in turn, is associated with the act of deciding or judging. Hence, Grotius explains, the word ‘judgement’ (*judicium*) is ‘used in a broader sense for any decision, including personal decisions, in every thing we think about or do’⁹⁹ and ‘the sovereign judgement [*summum ... iudicium*] is also necessarily of him who has the sovereign authority [*summum imperium*], that is what we call ‘the sovereign power’ [*summa potestatum*]’.¹⁰⁰ Directive judgement or rule, by contrast, is associated with what Grotius calls *auctoritas*. As Grotius writes about persuasive rule—i.e. the weaker form of directive rule which, contrary to declarative rule, does not take away the freedom of the person ruled—, ‘it is exercised by those who take the lead (as Tacitus says) *on account of their authority to persuade, and not their authority to judge* [*auctoritate suadendi, non iubendi*], just like physicians, lawyers or counsellors, in questions which are not necessary’.¹⁰¹ The stronger form of directive rule, declarative rule, carries such *auctoritas* as well. Only, as a form of directive judgement that comes with the force associated with knowledge of necessary consequences, it does so to such a high degree that it indirectly takes away the freedom of the ruled, without however involving any imperative command.

Now, in his English translation of the long passage quoted above, Harm-Jan van Dam gives *auctoritas* as ‘weight’, presumably in order to avoid confusion with the term *imperium*, translated throughout his edition as ‘authority’. The rendering of *auctoritas* as ‘weight’ is clever and elegant for reasons that I shall return to shortly. It does, however, obscure the fact that, in the passage quoted, Grotius appeals to a well-known distinction between *potestas* and *auctoritas* which has specific connotations. The distinction is, of course, a crucial component in the republican discourse of Roman Antiquity (for Cicero, famously, power resides in the people while authority resides in the senate¹⁰²). However, in the context of a discussion of ecclesiastical right and *ius circa sacra*, the distinction primarily connotes the Gelasian distinction between *auctoritas pontificum* and *potestas regia*, a standard medieval distinction stemming from the famous 494 A.D. letter from Pope Gelasius I to Emperor Anastasius, the so-called *Famuli vestrae pietatis*, reminding the latter that the direction of the world is jointly ensured by the sacred authority of the pope and the power of the king: ‘There are indeed, Your Majesty, two [powers] by which this world is mainly ruled: the sacred authority of pontiffs and the royal power [*Duo sunt quibus principaliter mundus hic regitur: auctoritas sacra pontificum et regalis potestas*]’.¹⁰³ The *duo sunt* is an emblematic expression of what, in

⁹⁹ *Ibid.*, chap. V, pp. 262–3.

¹⁰⁰ *Ibid.*, chap. V, pp. 262–3.

¹⁰¹ *Ibid.*, chap. IV, pp. 246–7; translation modified.

¹⁰² Cicero, *De Legibus*, III.28.

¹⁰³ S. Gelasii Papae, Epistolae 12, in Andreas Thiel (ed.), *Epistolae Romanorum Pontificum genuinae* (Brunsbergae, 1868), pp. 350–1. For a classic commentary, see Aloysius K. Ziegler, ‘Pope Gelasius and his

Grotius's time and Calvinist context was referred to as 'collaterality' and it is remarkable, if not outright disconcerting, to see it mobilised here in this way by an author reputed paradigmatically Erastian.

This is, however, not the only thing that should be noticed in Grotius's text. Just as important is, I think, the rhetorical side to the distinction *auctoritas-potestas*. In Ciceronian rhetoric, *auctoritas* is something that lends weight to an argument or discourse by reference to the superior credibility of the utterer. As Marius Victorinus puts it in his *Explanationes in Ciceronis Rhetoricam*, cited by Karla Pollman in an insightful chapter on the topic, 'authority is a more truthful and honest argument, which one thinks one has to believe as if by necessity [*auctoritas est argumentum verius atque honestius et cui quasi necesse habeat credi*]'.¹⁰⁴ Within the political realm, as Pollmann puts it, '*potestas* denotes magisterial power and control by virtue of an office, while *auctoritas* signifies the influence which is conceded voluntarily to a person, institution, or text'.¹⁰⁵ What matters about these characterizations is that *auctoritas*—as indicated also by the etymology of the term from the verb *augere*—lends credence or gives weight to an argument in such a way that it influences judgement without forcing it. *Auctoritas*, in this sense, does not prescribe a decision but invites voluntary concessions. In other words, in relation to judgement, *auctoritas* becomes a factor in the process of *deliberation* rather than in the *act of decision*: an authority weighs in on an interlocutor's process toward judgement but does not judge in the latter's place. Hence, when Grotius suggests that the directive judgement of the church is associated with authority and that it consequently must, as an obligation, be taken into account in the sovereign's *deliberations* about sacred matters, he also suggests that the declarative rule of the clergy intervenes *before* imperative judgement. Declarative judgement 'weighs in' on the deliberation, or guides the deliberation, understood as the procedure, but it does not determine or contribute directly to the decision, or the decisional act of judgement, which remains the sovereign's sole responsibility.

A conclusion to this effect is reinforced by a comparison with *De iure belli ac pacis*, Book II, chapter 23, where Grotius, in the first sections, addresses the general question of counsel in relation to moral deliberation. Taking his point of departure in Aristotle's distinction between knowledge and opinion, demonstration and dialectical deduction, he explains how 'we cannot expect the same Degrees of Evidence, in Moral, as in Mathematical Sciences', but that in ethics we often find ourselves incapable of determining the just mean, being caught up between two extremes like 'in a Twilight, or Lukewarm Water, and this is what Aristotle says, ... *It is often difficult to judge which side to take*'.¹⁰⁶ In such situations, two kinds of factors draw the mind to one side or the other, namely, 'Arguments deduced from the Thing itself [*ex re*]' or 'the good Opinion [the mind] entertains of other Men [*ex opinione ... de aliis hominibus*], who have declared [*pronunciantibus*] themselves upon that Affair'.¹⁰⁷ Grotius also recasts the distinction as one between argument 'from the Reason of

teaching on the relation of Church and State', *Catholic Historical Review*, 27 (1941/1942), pp. 412–37. For a more recent assessment, see Yves Sassier, '*Auctoritas pontificum et potestas regia : faut-il tenir pour négligeable l'influence de la doctrine gélasienne aux temps carolingiens ?*', in *Le Pouvoir au Moyen Âge*, ed. C. Carozzi and H. Taviani-Carozzi (Aix en Provence, 2007), pp. 213–36.

¹⁰⁴ Quoted in Karla Pollmann, 'Christianity and Authority in Late Antiquity: The Transformation of the Concept of *Auctoritas*', in *Being Christian in Late Antiquity. A Festschrift for Gillian Clark*, ed. C. Harrison, C. Humfress, & I. Sandwell (Oxford, 2014), p. 159.

¹⁰⁵ See Pollmann, 'Christianity and Authority', p. 159.

¹⁰⁶ Grotius, *The Rights of War and Peace*, translated by J. Morrice [1738], ed. R. Tuck, 3 vols. (Indianapolis, 2005), Book II, chap. 23, pp. 1115–6.

¹⁰⁷ *Ibid.*, Book II, chap. 23, pp. 1117–8.

the Thing' (*intrinseca*) or 'from the Authority of others' (*ab aliorum auctoritate*).¹⁰⁸ When our own knowledge of the matter proves insufficient in the context of such deliberations, we 'must listen to the Directions of wiser Men in order to regulate their Judgment in Practice [*ut activum iudicium recte conforment, tenentur audire sapientum consilia*]', or 'rely upon the Authority of the most numerous and judicious [*quae plurimis praestantissimique nitantur auctoribus*]'.¹⁰⁹ And, as Grotius notes, 'this way of judging is what Princes chiefly make use of, who can hardly afford Time enough to learn and examine by themselves the most subtle Points of Arts and Sciences'.¹¹⁰

The passage in *De imperio* regarding the authority of clergy to judge in sacred matters must, I think, be seen in light of this rhetorical understanding of *auctoritas*. The seemingly conflictual relation between two 'sovereign judgements' in sacred matters is not, as in Hobbes for example, resolved by eventually subordinating the declarative rule of pastors to the imperative rule of the sovereign power, by deeming one obligation more obliging than the other, or by deeming the obligation that comes with declarative rule to be, in reality, an obligation only in name. The compatibility of the two 'sovereign judgements' and thus the coherence of Grotius's overall position lies more in the procedural distance between the two judgements; it lies in the fact that the obligations they each entail are not brought to bear on the same object at the same time but that they apply at different moments, the one as an obligation tied in with *deliberation* and the other as an obligation tied in with *decision* and *judgement*. Either form of rule, albeit for different reasons, *does* entail an obligation which would inevitably clash with the other *if* applied to the same object, or at the same time. But they are *not* thus applied. When Grotius claims, in the passage quoted above, that two persons can be *mutuo praesse et subesse*, Harm-Jan Van Dam then, once again, shows considerable insight when translating *mutuo* as 'alternately' (as opposed to 'mutually'). The pastor and the sovereign are 'alternately' superior and inferior, taking turns, so to speak, shifting back and forth between pastor-guided procedural deliberation and sovereign decision-making. The implicit temporal aspect is crucial, for the compatibility of the two situations lies in the fact that the declarative judgement of pastors intervenes before the imperative judgement of a sovereign, obliging him to accept guidance in his deliberations about sacred matters by adequately trained pastors, while still assuming—as indeed any believer can and must—the responsibility to decide for himself about the conclusion of those deliberations. As Grotius writes in chapter IX, in his discussion of jurisdiction, 'just as philosophers, physicians, lawyers, friends too, do not properly render justice when they give advice (even if it is often a serious fault to ignore advice), so a pastor does not render justice when he gives sound spiritual advice'.¹¹¹ Declarative rule is about guiding a deliberation, a decision-process, not about recommending or imposing a final decision. And as such, the sovereign is positively obliged to both *listen to and weigh* the independent judgement of trustworthy and well-educated ecclesiastical counsellors.

On the face of it, this model represents a significant concession to the clergy. Stripping the church of all constitutive or coercive power, Grotius denies pastors *qua* pastors the possibility of assuming a function as deputies of the state, rejects the establishment of the church as a state church, and deprives the clergy of the constitutive power by emanation that pertains to government institutions. However, by attributing to ecclesiastical counsellors the kind of non-coercive yet obligatory power that comes with declarative rule, allowing pastors to weigh in on the deliberations of the sovereign power with advice that carries obligation,

¹⁰⁸ *Ibid.*, Book II, chap. 23, pp. 1119.

¹⁰⁹ *Ibid.*, Book II, chap. 23, pp. 1118–9.

¹¹⁰ *Ibid.*, Book II, chap. 23, pp. 1118–9.

¹¹¹ *Ibid.*, chap. IX, pp. 406–7.

albeit indirectly, Grotius still grants the clergy a significant political role. Indeed, when Grotius insists that sovereigns ought to ‘lend a willing ear to the opinions of pastors who excel in piety and learning’,¹¹² this is not simply a recommendation. It is an obligation. That is to say, sovereigns are not obliged to *take* the advice, but they *are* obliged to listen to it and give it appropriate weight in their deliberations.

5. Restrictions on the Declarative Rule of Pastors

As we have seen, somewhat contrary to what we would expect from a reputed Erastian, Grotius’s model of ecclesiastical counsel grants pastors—or rather the pastoral function, or pastors with *auctoritas*—the right to give binding advice to the sovereign power, or to give recommendations which are indirectly obligatory and thus take away the sovereign power’s freedom of action. That is no small right. Yet, when we take an even closer look, Grotius submits this authority to a number of restrictions and conditions that are not simply circumstantial or adaptations of the model to singular situations but principled or formal restrictions which, as such, are part of the model he proposes.

First, the declarative rule of ecclesiastical counsellors is self-evidently restricted to the divine law they are presumed to be declaring, i.e. divine positive law as contained in Holy Scripture. Pastors hold declarative power only to the extent that they provide advice warranted by Scripture and hold no such power if they go beyond that. As Grotius quotes Chrysostom, pastors are ‘*commanded to proclaim what they have heard, do deliver what they have received*’.¹¹³ In other words, when acting as such, pastors cannot *innovate*: ‘No one is bound to believe priests if they teach what is against the law, but also if they teach what does not belong to the law. For it is said to the priests, indeed to them in particular, You shall not add to the word which I command you’.¹¹⁴ This does not imply that a pastor cannot give advice that has no ground in Scripture or that he cannot legitimately recommend some course of action on the basis of his own judgement, but only that such counsel will be directive based only on persuasion and not on declaration and therefore does not come with the obligatory quality of the latter.¹¹⁵ The sovereign power is perfectly free to ignore it.

Second, the binding character of a pastor’s judgement in sacred matters only holds on the condition that the sovereign power is first persuaded of the credentials of the advisor in question:

As regards divine authority, God reveals and exposes some things himself, other things he reveals himself and exposes by way of others, such as angels, prophets, apostles. Whenever something is exposed by way of others, we must be convinced that the person exposing it cannot be deceived or deceive us in what he exposes, before the mind accepts it as certain.¹¹⁶

What holds for angels, prophets and apostles holds *a fortiori* for pastors claiming to detain knowledge of the divine positive law: their authority is subject to verification. The first thing to do for the sovereign power, before even considering the content of the advice provided, will then be to ascertain himself of the credentials of his ecclesiastical advisors with respect to

¹¹² Grotius, *De imperio*, vol. I, chap. VI, pp. 292–3; see also VIII, pp. 390–1.

¹¹³ *Ibid.*, chap. IV, pp. 250–1.

¹¹⁴ *Ibid.*, chap. VI, pp. 302–3.

¹¹⁵ See *ibid.*, chap. IV, pp. 252–3: ‘the kind of rule which is granted to pastors ... must be ranged either under the purely persuasive rule or under the declarative one’.

¹¹⁶ *Ibid.*, chap. VI, pp. 294–5.

their competence and sincerity as interpreters of Holy Scripture, because this will determine whether their advice comes with the obligation attached to declarative judgement or not.¹¹⁷

Third, a pastor's declaration of divine law is subjected to additional mediation in relation to other instances of declarative rule. Both physicians and philosophers, albeit in different ways, declare *natural* law, that is to say, provide advice based on their analysis of the intrinsic nature of things. The declarative rule of pastors, by contrast, concerns *positive* law whose nature and validity is not determined by an analysis of the intrinsic nature of things, but by external factors. It has to be known through something extrinsic which, in this case, is revelation, or prophesy as committed to Holy Scripture. Certainly, Grotius is clear that divine positive law will always take precedence when declared through a credible source:

If there is any divine oracle among men, if any prophets are infallible, both kings and private individuals must adapt their judgement to this norm. Then kings may not command anything which conflicts with it, and individuals may not do or believe anything which conflicts with it. For all human authority, every human action is subject to God's authority. But the question is whether any such oracle has existed since the apostles.¹¹⁸

The sovereign power is absolutely bound to adopt as norm of action the infallible judgement of oracles and prophets, once their credentials are verified. However, there are no oracles or prophets anymore. The time of the prophets has revolved and 'no man is infallible'.¹¹⁹ Consequently, when a pastor declares divine positive law, he does this only in virtue of a presumed knowledge of the medium through which the original prophesy was transmitted, i.e. in virtue of his presumed knowledge of Scripture. Hence, pastors are more like 'ambassadors, messengers, preachers', they 'do not oblige anyone by their own authority [*suo imperio*], they make known the authority of others [*alienum imperium*]'.¹²⁰ For this reason, content-wise, ecclesiastical counsel is, at least in principle, subject not just to single, but to *double* authentication. The ruler must be convinced *both* about the credentials of the pastor who provides counsel guided by Holy Scripture, *and* about the authenticity of the Holy Scripture itself, i.e. the divine inspiration of the Bible as prophetic knowledge, and the authenticity of the version of the Bible that the pastor relies on. Grotius, of course, never really questions the latter point, but it is not difficult to see how, somewhat inadvertently, he here lays down some of the groundwork for the onslaught on the traditional conception of the authenticity of the Bible later to be found in Spinoza's *Tractatus theologico-politicus*.¹²¹

Fourth, a sovereign is entitled to his own counsel and should therefore include himself among the qualified ecclesiastical counsellors: 'The sovereign power has the right to judge

¹¹⁷ We here touch upon a major discussion field regarding self-interested priestly advice and frankness in speech (*parrhesia*) among humanists and ecclesiastics of the late sixteenth and early seventeenth century. These discussion partly originated in Erasmus's admonitions against 'flatterers' in his 1516 *The Education of the Christian Prince*, but can be traced further back to John of Salisbury's twelfth-century *Policraticus* and, of course, Plutarch's *How to Tell a Flatterer from a Friend*, which Erasmus included in the first edition of his work (see Erasmus, *The Education of the Christian Prince*, trans. M. J. Heath, ed. L. Jardine (Cambridge, 1997), pp. 8, 52, 54–65, 90, 114–7; John of Salisbury; *Policraticus*, ed. C. J. Nederman (Cambridge, 1990), III, sect. 4, pp. 18–9, and VII, sect. 21, p. 167). For an overview, see Lærke, *Spinoza and the Freedom of Philosophizing*, chap. 6. For a full study of flattery in political thought, see Daniel J. Kapust, *Flattery and the History of Political Thought* (Cambridge, 2018).

¹¹⁸ Grotius, *De imperio*, vol. I, chap. VI, pp. 294–5.

¹¹⁹ *Ibid.*, chap. VI, pp. 294–5.

¹²⁰ *Ibid.*, chap. VI, pp. 250–1.

¹²¹ See Lærke, *Spinoza and the Freedom of Philosophizing*, chapter 3.

with the pastors'.¹²² Especially in the context where there is question of a collective ecclesiastical council, i.e. a synod, the sovereign himself should not simply be an external spectator to deliberations, but an active member, a counsellor as well as the counselled:

If a synod is held in order to obtain a declarative judgement, that is, so that the bishops make clear from Holy Scripture what is right and wrong, what is lawful or unlawful, in this case a king well versed in Holy Scripture cannot be denied that which is granted to private individuals: to *search the scriptures*, to *test the spirits*.¹²³

This said, when weighing his own advice to himself, a sovereign would be commendable not to privilege it but consider it on a par with that of other members of the counsel:

It remains true that sometimes, to their great honour, kings can subject themselves both in civil affairs to their senates and parliaments and in religious affairs to their pastors acting as public judges However, since this subjection depends on the king's will, which, moreover, may be changed, it does not in the least detract from his sovereign authority.¹²⁴

The model Grotius has in mind here is perhaps best understood by analogy to King James VI/I's self-understanding as a member of the Anglican church rather than its head and as a pastor among pastors in ecclesiastical counsel.¹²⁵

Fifth, a sovereign is only obliged to seriously consider the counsel of pastors and synods to the extent that he does not take it upon himself to examine the question in sufficient depth to be able to form a qualified judgement on his own: 'Nobody is utterly bound to follow someone's directive judgement, since he is, of course, free to do his own investigations and try to reach a firm knowledge of the truth'.¹²⁶ This is a general proviso that acquires particular urgency in relation to in sacred matters. In other matters, a sovereign ought to follow the directive judgement of qualified counsellors simply because he cannot be expected to possess sufficient knowledge to judge wisely about them all, given that he may be 'held back from these investigations by a lack of brains or time, or by other business'.¹²⁷ The situation is, however, different in relation to divine positive law because 'in the case of saving faith nobody can safely give in to another's directive judgement'.¹²⁸ All believers are required to examine sacred matters for themselves and a sovereign is held to such examination in an even higher degree due to his responsibility to safeguard the integrity of the state: the 'architect of the state ... must look into sacred matters with special care'.¹²⁹ The sovereign is not allowed to neglect knowledge of church government for nothing is more excellent than this or more important to the integrity of the state: Scripture shows how all those who have shifted this

¹²² Grotius, *De imperio*, vol. I, chap. XII, pp. 360–1.

¹²³ *Ibid.*, chap. VII, pp. 360–1.

¹²⁴ *Ibid.*, chap. IX, pp. 432–3.

¹²⁵ See Rabbie, 'Grotius, James I, and the *ius circa sacra*', pp. 29–30. By extrapolating on such remarks, one early English reader of *De imperio*, Richard Baxter, conceived of an ingenious way to use Grotius's argument in the Anglican context. Hence, in his 1659 *The Holy Commonwealth*, Baxter argued with Grotius in that a King can only preserve, but not alter religion and that, in ecclesiastical matters, he can only intervene in his capacity as a pastor (see Richard Baxter, *The Holy Commonwealth, or Political Aphorisms* [London, 1659], pp. 309, 376; see also Barducci, *Hugo Grotius and the Century of Revolution*, p. 104). Still, it should be noted that King James himself condemned Grotius's views because, as he saw them, they allowed the king to alter religious doctrines.

¹²⁶ Grotius, *De imperio*, vol. I, chap. VI, pp. 296–7.

¹²⁷ *Ibid.*, chap. VI, p. 296–7.

¹²⁸ *Ibid.*, chap. VI, pp. 296–7.

¹²⁹ *Ibid.*, chap. V, pp. 268–71.

burden to others have been deceived by men and punished by God, deprived of their throne or, kings in name only, reduced to serving the desires of others.¹³⁰ This is why, in sacred matters, not only should the sovereign be a counsel to himself, among other counsellors, but also a conscientious examiner of the truth. The distinction between these two roles is paper thin, but consequential. What Grotius aims at is that a king may, in council, make himself a pastor among pastors, but, in the last resort and in fundamental matters, he must equip himself with sufficient theological knowledge to judge independently according to his own examination of the truth.

This requirement of religious self-examination on the part of the sovereign power could seem an excessively time-consuming task. However, what Grotius has in mind is in fact relatively simple for ‘theology and religion are simple and plain matters’ and one should remain ‘moderate in knowledge’.¹³¹ Moreover, ‘God does not disclose [*declarationem*] his wishes in detail’.¹³² Finally, one should know ‘the importance of distinguishing in church government between necessary and not necessary things’.¹³³ These different factors imply that the sovereign is only obliged to examine for himself those general, undetailed precepts which have been expressly stipulated by God as obligatory. Indeed, Grotius goes on to argue, from the viewpoint of the *application* of this rule, the sovereign ought only concern himself with such theological matters as are absolutely necessary, namely those which ensure unity and peace. As for the rest, he should let diversity reign: ‘a diversity of church government must form no obstacle to fraternal unity Or in things determined by God’s command the execution is necessarily incumbent upon the sovereign power; in other things there is a certain freedom of choice’.¹³⁴ In other words, what the sovereign ought to examine for himself is mostly whether the ecclesiastical counsel he is given conforms to the core doctrines of the Christian religion. Now, *De imperio* says little about what those core doctrines consist in. It can, however, to some extent be intimated from *Ordinum pietas*¹³⁵ and is even more clearly expounded in the 1611 *Meletius* (a text which, however, was not known by Grotius’s contemporaries).¹³⁶ In *Meletius*, he not only argues in favour of reducing the number of necessary dogma to a minimum but also stresses that the minimum retained should be practically oriented toward good works rather than toward speculative doctrine because ‘the principal cause [of Christians being diverse and out of harmony] is that the dogmas are declared the most essential part of the religion, whereas the ethical precepts are disregarded’. For ‘since ethical precepts are mostly plainer and less complicated, it stands to reason that most people readily agree on precepts’. Consequently ‘the remedy for this disease will ... consist in limiting the number of necessary articles of faith to those few that are most self-evident’.¹³⁷

6. Conclusion: A Model of Deliberation

¹³⁰ *Ibid.*, chap. VI, pp. 299–301.

¹³¹ *Ibid.*, chap. V, pp. 270–1.

¹³² *Ibid.*, chap. I, pp. 160–1.

¹³³ *Ibid.*, chap. XI, Summarium, pp. 524–5.

¹³⁴ *Ibid.*, chap. XI, pp. 526–7.

¹³⁵ Grotius, *Ordinum pietas*, pp. 168–71.

¹³⁶ The text was only found and published fairly recently, by G. H. M. Posthumus Meyjes in 1988. See Hugo Grotius, *Meletius, sive de iis quae inter christianos convenient epistola*, ed. and trans. G. H. M. Posthumus Meyjes (Leiden, 1988). For commentary, see in particular Beal, ‘Grotius et le *ius circa sacra*’, p. 721; see also Jacqueline Lagrée, *La Raison ardente. Religion naturelle et raison au XVII^e siècle* (Paris, 1991).

¹³⁷ For all three quotes, see Grotius, *Meletius*, Epilogue, §§ 89–91, p. 133.

Grotius's conception of the declarative rule of pastors is an attempt to develop a conceptual model that grants ecclesiastical counsel a natural or, rather, divine, aspect. Declarative rule puts gentle yet real pressure on a sovereign to conform to the necessary tenets of positive divine law, but without ever putting into question the indivisibility of the sovereign's constitutive rule and monopoly on coercion. This decidedly non-Erastian element in Grotius's model is however restricted by considerations concerning the status of the medium through which divine law is transmitted, i.e. the person of the pastor. While a pastor speaking *qua* pastor, i.e. as a declarer of positive divine law, does yield considerably authority, indeed an obligatory rule over the sovereign, concerns about the authentication of ecclesiastical discourse, i.e. question of when pastors do in fact speak *qua* declarers of positive divine law, and when they speak only for themselves, trying only to persuade, significantly restricts this legitimate power of the clergy. There are different degrees of obligation involved in different forms of declarative rule. The obligation imposed via a physician or philosopher declaring matters pertaining to natural law is stronger and more direct than the obligation imposed via a pastor in matters pertaining to positive divine law. Rulers may be more in need of counsel in relation to sacred matters because of the incomparable importance of not to err, but they are less obliged to abide by it. This is why, eventually, 'the conclusion is that in matters which are defined either way by God's law, nobody is bound by another's declarative judgement (which is a species of directive judgement, as I have said), nor can he with good conscience just give in to it'.¹³⁸ This freedom with regard to ecclesiastical counsel does not, however, stem from its declarative nature which does in fact 'take away the freedom of action'. It stems from the mechanisms of authentication involved when dealing with counsel in sacred matters. Hence, a sovereign is obliged and not free to heed an ecclesiastical declarative judgement, but free and not obliged to consider an ecclesiastical judgement declarative. In fact, before accepting it as such, he is bound to hold it up against his own examination of positive divine law which he is 'not allowed to neglect'. The result is that a sovereign, despite the obligatory character of declarative rule, still remains free to deliberate about ecclesiastical counsel and of course retains the right to decide in case counsellors disagree with each other: 'The ruler must impose his own judgement, in particular if the opinions of his counsellors, to be weighed rather than to be counted, diverge'.¹³⁹

So what does all this add up to? In the end, in its application, I think the model remains largely Erastian to the extent that this label remains helpful. In practice, Grotius grants very little to the clergy. While the attribution of declarative rule to pastors at first seems like a surprisingly important concession, the restrictions and layers of required authentication that come with it eventually diminish their authority considerably. What Grotius gives with one hand, he takes away with the other, and the question which imposes itself is this: Why then go through all the trouble in the first place? What does it matter that declarative rule is granted to the clergy if that rule is subjected to so many restrictions that it can hardly ever be brought to bear unimpeded on sovereign judgement? In reality, I think the importance of this complex model lies less in the conclusions it prescribes than in the procedure it recommends. Always a lawyer keeping an eye on jurisprudence, in *De imperio*, Grotius elaborates a procedure for considering the different aspects of ecclesiastical counsel in *the proper order*. The development is not designed for strict *deduction* and *demonstration* but for *deliberation* and *procedure*, weighing reasons for and against. The model is intended to guide a sovereign in his deliberations but does not command judgement. In this respect, reflectively, Grotius presents his own understanding of the scope and role of counsel exactly in the form of such counsel, i.e. in the form of a deliberative model intended to firmly guide a sovereign to adopt

¹³⁸ Grotius, *De imperio*, vol. I, chap. VI, pp. 298–9.

¹³⁹ *Ibid.*, pp. 298–9.

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a determinate path toward his own, free decisions about sacred matters, but in constant consultation with 'wise men'.