THE CAMBRIDGE
HISTORY OF
POLITICAL THOUGHT
1450–1700

EDITED BY
J.H. BURNS
Professor Emeritus of the
History of Political Thought,
University of London

WITH THE ASSISTANCE OF
MARK GOLDIE
Lecturer in History
and Fellow of
Churchill College, Cambridge

CAMBRIDGE UNIVERSITY PRESS
The Saxon philosopher Samuel Pufendorf has, for three reasons, an unusual place in the history of modern political thought. First, unlike Hobbes or Montesquieu, he has often been consigned to oblivion. He was famous in his own time and a central figure in eighteenth-century writing, through the texts translated, compiled and popularised by Jean Barbeyrac, Jean-Jacques Burlamaqui, and Jean-Jacques Rousseau. Gradually, however, his work became discredited, becoming overshadowed by Christian Thomasius, Christian Wolff, and Kant in Germany, and by Locke and Rousseau in the English and French traditions. His reputation was never secure, and even contemporaries passed contradictory judgements. Leibniz denigrated him as 'no lawyer, and scarcely a philosopher at all' (Leibniz 1768, p. 261). Thomasius lauded him as 'the first in Germany to think of establishing a science of morality in accordance with mathematical methods' (Thomasius 1719, p. 6). Secondly, unlike Bodin, Locke, or Rousseau, Pufendorf left a disparate body of work, seemingly lacking in unity and containing no major political text. He wrote voluminously on practical philosophy and public law, and monumental historical works. Yet he does not look like a classical political thinker. Thirdly, unlike, say, Machiavelli or More, Pufendorf's political thought is characterised not by the originality of his own ideas, but by his eclecticism. He borrowed the epistemological and methodological principles of the Jena Cartesian Erhard Weigel and sought to combine the opposing anthropological and political concepts of Hobbes and Grotius. Consequently, for a long time he was seen as 'a thinker of secondary importance', at worst 'a dull and indigestible compiler' (Derathé 1970, p. 78; Belme 1856, p. 11). Pufendorf's reputation has, therefore, suffered, not so much because of the vicissitudes of the current of thought of
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which he was the most prominent representative, that of modern natural law, but from the enormous complexity of his work and the stature of his great contemporaries and successors.

Pufendorf was a pioneer of German theories of natural law and of the state, and an exponent of the doctrine of the interests of states. His main legacy, after his Elements of Universal Jurisprudence (1660), is his On the Law of Nature and Nations (1672) and On the Duty of Man and the Citizen (1673), his treatises on practical philosophy which became authorities throughout Europe, shaping the rise of the school of law of nature and nations, and serving as justifications for regimes based either on enlightened despotism or on declarations of the rights of man.

Pufendorf was early attracted to political problems and quickly became an authority on public law, examining the natural foundations and historical forms of the state, as in his essay On the Constitution of the German Empire (1667) and his studies On the Irregular Republic (1677) and On the Systems of States (1677), which gained him a solid reputation amongst publicists. He also examined ecclesiastical law and church-state relationships, as in his treatise On the Relation of the Christian Religion to Civil Life (1687), which put him firmly in the Lutheran tradition of the subordination of religious communities to civil authority.

He was later appointed official historiographer to the kings of Sweden in 1677 and to the Electors of Brandenburg in 1686, and produced two impressive Histories of Sweden (1695 and 1696) and two Histories of the Electors of Brandenburg (1705 and 1714), painstakingly based on diplomatic archives, a milestone in German historiography. He also produced an Introduction to the History of the Principal Kingdoms and States of Europe (1682). This, by highlighting 'the interests of states', shows him to be one of the first German theoreticians of the idea of reason of state. It was a theme already alluded to in his Constitution of the German Empire, and was a result of his openness to knowledge acquired both from experience and the demands of reason. It is not surprising that at the beginning of this century Meinecke, the historian of reason of state, should regard Pufendorf as freeing the theory of the state 'from the shackles of theology' and building instead upon the master conception of 'reason of state and the interests of nations' (Meinecke 1924, p. 280).

A deep coherence underlies the diversity of Pufendorf's work. Its unity lies in his central preoccupation with the nature of the state and the primacy of the political. His approach is marked by eclecticism, and he cannot be reduced to any particular school. There is something in common with the rationalistic optimism common at the time, yet his ideas remain open to the experience history provides. He is certainly within the tradition of Ockham's voluntarist nominalism, but that does not prevent Pufendorf maintaining that divine decrees are rational insofar as they respect the requirements of the order of Creation. Similarly, the part he allows to consent in the foundation of all authority does not mean he can be seen as offering an early form of liberal individualism, nor does the favourable way he seems to regard monarchy allow of an opportunistic absolutism.1 He is fundamentally to be seen as a mediator and reconciler, a man of compromise.2 He embodies in secular philosophy the transcendent and conciliating spirit which, a hundred years earlier, was represented in theology by Suarez. As a German Suarez, he lacks the theological and metaphysical temper of the Spanish Jesuit, but he shares his eclecticism and ability to reconcile conflicting theses. This is first evident if we examine the philosophical bases of his political thought.

i The philosophical bases of Pufendorf's thought

Pufendorf's overriding aim was to take advantage of the methodology of the physical and mathematical sciences in order to confer on the human sciences the certitude that the Aristotelian scholastic tradition denied them (Pufendorf 1660 1931, p. 1/xxviii, (1672) 1934, ii.1, pp. 14-15/22).3 In this he was profoundly influenced by Descartes, introduced to him by his Jena master, the philosopher and mathematician Weigel (Spiez 1881). Although Pufendorf was convinced of the appropriateness of applying the new scientific methodology to socio-moral reality, either in its resolute-compositional form, to which Hobbes showed him the way, or in its demonstrative form, for which Spinoza provided the example, he nevertheless took care not to fall into the mechanistic materialism of the former or the sociological naturalism of the latter, who both reduced the socio-moral universe to that of physical reality ((1672) 1934, ii.ii.3, pp. 108-11/158-62). Thus it was that he set himself the preliminary task of

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1. For some of these theses see Weidel 1958, pp. 6-7, 18-9, 1962, p. 130-1; and Sartor 1932, p. 1306.
2. On Pufendorf's eclecticism see his letter to Thomasius (19 June 1688) in Pufendorf 1823, pp. 20-1.
3. For recent commentary see Kneer 1951, p. 3; Denver 1972, pp. 9, 324.
4. References to the text and notes to Pufendorf's On the Law of Nature (1672) 1934, Elements ((1669) 1931), and On the Duty of Man (1673) 1929 give page numbers of the Latin text and of the English translations; in the case of On the Law of Nature and On the Duty of Man page references are preceded by book and section numbers. In references supplied in the text 'Pufendorf' is omitted where it is obvious that his work is being cited.
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Pufendorf fulfilled this task by a theory of moral realities (entia moralia) which enabled him to stress the irreducibly separate origins of the socio-moral world (Welzel 1958, pp. 19–21; Krieger 1965, pp. 73–81). This was a singularly innovative theory of culture, yet a misunderstood one. The epistemological considerations underlying the Elements of Universal Jurisprudence and On the Law of Nature, under the rubric of entia moralia, are the key to his legal and political thought ((1660) 1931, p. 1/xxviii, Def. 1–xxi, pp. 1–242/1–206; (1672) 1934, i.1, pp. 1–14/3–21). In some aspects they are close to modern thinking. They foreshadow the neo-Kantian view of the Geisteswissenschaften and the Naturwissenschaften as opposites: a distinction between the realm of culture, which is the creation of freedom, and the realm of nature, which is dominated by necessity (Welzel 1958, pp. 19–21; 1962, pp. 132–3). It renders the science of humankind separate from the natural sciences. To Pufendorf, human beings are different from all other natural beings, who are motivated solely by instinct, not only by virtue of their faculties of knowing and willing, but also in their ability to invent and apply means of directing them or providing for their needs. Those means are ideas, which serve to clarify the understanding, and moral entities, which serve as rules for acts of the will ((1672) 1934, i.2, pp. 2/4–5). In thus defining the cultural world, Pufendorf is able to synthesise the sciences of the mind and the moral and social sciences on the basis of this theory of moral entities.

Following the model of the creation of natural reality either by the imposition of the will of God, 'who did not wish men to live without culture or morals, like the beasts', or of human will, to fulfil the needs of communal life, moral entities are ordained for the perfection of human life insofar as it is susceptible of order and harmony ((1672) 1934, i.3.4, pp. 3/5). Pufendorf sees these realities as modes, which do not consist of themselves but are always supported by physical realities ultimately serving as substances for them, and affecting them in conformity with the will that brought them into being ((1672) 1934, i.3, p. 2/5). Since they owe their existence solely to the free decisions of beings endowed with reason (as a shadow owes its existence solely to light), they disappear once those decisions have been revoked, with no resultant change in the physical substance of the realities they affect ((1672) 1934, i.4, p. 3/6, i.23, p. 14/21). In maintaining that moral realities have no effect of a physical kind and hence stressing the radical heterogeneity of the socio-moral and physical worlds, Pufendorf was seeking to avoid both the terrible confusions of scholastic thought still weighing upon contemporary political theologies and the reductive materialist contaminations of the physical and mathematical sciences jeopardising the rise of modern political philosophy.

Once he had determined the status of moral realities, Pufendorf defined their different categories, conceptualising them on the model of the traditional metaphysical categories of space, time, substance, quality, and quantity. He differentiated the following four moral categories ('space' and 'time' being combined in the first of them). First, states (status), which, by analogy with space and time, form the framework within which moral beings function ((1672) 1934, i.6, p. 4/7). By 'state' Pufendorf meant any condition, in principle involving rights and duties, in which people are placed in order to carry out certain actions ((1673) 1927, i.1.1, p. 98/89). By analogy with space, he distinguishes the state of nature (status naturae), which arises from the imposition of divine will, and adventitious states (status adventitii), which are the result of human wishes (marriage, domestic and political society). By analogy with time, he distinguishes youth and age, which arise from the order imposed by God, and minority and majority, which depend on the arbitrary conventions of humankind ((1672) 1934, i.7–10, pp. 4–6/7–10). Secondly, moral persons (personae morales), having the role of substances, which, though grounded in physical realities, do not lose their moral character. By moral person Pufendorf means not only any individual, but also any group of persons, in relation to the moral state they find themselves in. He contrasts the single person (persona simplex) and the composite person (persona composta) and in each case the political or ecclesiastical public and private person ((1672) 1934, i.12–13, pp. 7–9/11–13). Thirdly, moral qualities, which are affective modes and cover every modification affecting persons at the moral level. Pufendorf distinguishes formal qualities (such as titles of honour), and operative qualities (such as powers, rights, and obligations, and honour, credit, and infamy). Fourthly, moral quantities, which are estimative modes, reflecting the degree of esteem that can be granted to things and actions in accordance with human judgement, such as consideration (estimativia) and price (pretium). These apparently highly academic

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4. For the definition of the moral qualities see Pufendorf (1672) 1934, i.17–18, pp. 11–12/16–17, (1666) 1931, Def. x.nift, pp. 8ff/11ff. For the distinction, see (1672) 1934, i.17–21, pp. 11–12/16–20.

5. Pufendorf (1672) 1934, i.17, 22, pp. 11–14/17–21, (1666) 1931, Def. x, xviii, pp. 72–76/64–70, 220–221/181–95.
distinctions were vital parts of Pufendorf’s renovation of the traditional theory of society, law, and the state.

These innovatory concepts were strikingly different from the still-dominant scholasticism, and though he did take up some of its ideas, they acquired a different meaning in his hands. This is particularly true of the ‘state of nature’. By this phrase he did not mean the scholastic notion of the ‘condition which nature intended should be most perfect’, but that condition which humankind is in ‘by the mere fact of its birth, all inventions and institutions... being disregarded’ (1672 1934, ii.ii.1, p. 105/154). The state of nature is derived from an analysis of humankind in its present state, and not from speculation about origins or alleged essential purposes. It was not thereby merely an abstraction or fiction, but a juridical reality characteristic of the life of people and societies bereft of all connections other than those that exist because they are similar by nature. The state of nature contrasts with every form of civilisation and civil society, it is prior to any institutions. From this basis, Pufendorf determines the basic rights and duties of man qua man, – ‘total independence from all but God’ and ‘complete equality before all men’ – and also the elementary rules which govern the relations of people and states living outside any political community.

In affirming the freedom and basic equality of all men in the state of nature, and in going against traditional doctrines like those of Filmer and Bossuet, Pufendorf undermined the current conception of natural authority, which derived the right to command from physical or intellectual superiority (1672 1934, i.vi.11, pp. 68–70/99–101). In its place he put a new theory of power in which all kinds of authority were grounded in agreement or free consent (1672 1934, iii.i.8, pp. 232/341–2). This doctrine of ‘conventionalism’ has close links with the epistemological principles embedded in his idea of moral entities. All social power is a moral quality grounded in acts of will. ‘Sovereignty, as a moral entity of one man over another, does not exist without a human act and is not intelligible without obedience.’ Thus, for instance, ‘no obligation to obey lies upon a woman before she has with her own consent subjected herself to a man’ (1672 1934, vii.ii.12, p. 587/863). Authority is hence grounded in the impositio of the free will. And as in the case of most moral entities, this impositio takes the form of an agreement, as in marriage or the civil pact.

and generates the differing adventitious states, such as marriage and citizenship, as well as the ‘moral persons’, exemplified in households, magistrates, and corporations.8

Amongst all the ‘moral persons’ created by an act of human will, Pufendorf pays particular attention to what he calls ‘composite moral persons’. These include corporations of merchants and artisans as well as the higher organs of state, as opposed to ‘simple moral persons’, such as officers or magistrates (1672 1934, i.i.12–14, pp. 7–11/11–13). This step displaces the traditional distinction between ‘artificial’ and ‘natural’ persons, and gives to composite moral persons a specific reality (Gierke 1902, p. 193). ‘A composite moral person is constituted when several individual men so unite that whatever, by reason of that union, they want or do, is considered as one will, one act, and no more’ (1672 1934, i.i.12, p. 7/11). Far from being imaginary, such persons are real; they have their own life and ends, deriving their autonomy from the will that animates them, and distinct from their creators (1672 1934, i.i.15, p. 10/15). It is precisely in this way that Pufendorf sees the state. ‘A state is a compound moral person, whose will, intertwined and united by the acts of a number of men, is considered the will of all’ (1672 1934, vii.ii.13, p. 672/884).

ii The background of law: anti-realism and voluntarism

It is difficult to underestimate the degree to which epistemological considerations underpin the whole range of Pufendorf’s practical philosophy. His theory of moral entities offered a new basis for a general theory of law and the state which was clearly anti-realist. A reading of the Elements of Universal Jurisprudence and On the Law of Nature and Nations reveals that Pufendorf was reacting against the errors and confusions entailed in scholastic attempts to define moral realities in terms of a naïve realism. He rejected the idea of real and eternal essences, separate from definite concrete actuality. His thinking challenged the validity of ontological assumptions on which the distinction of essence and existence was based. In his view, it was erroneous to affirm that essences were eternal and not dependent on the will of God. His thought is resolutely nominalist and denies the reality of universals, or essences, regarding all things as dependent on the contingent

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will of God. Following the path established by Ockham's voluntarist nominalism, he directly questioned the objective nature of values and the doctrine of the perspectas moralis of human acts. Since there was no longer any essence independent of the divine will, there was consequently no good or evil in se, and values simply stemmed from the unfathomable decrees of a legislating will. 9

Nevertheless, Pufendorf did not follow Ockham into his paradoxical reflections on the imperative nature of the Decalogue. This was because to him it seemed that if God is free to create, he is nonetheless bound by his creation. Thus, if he has created man as a reasonable and social being, he is necessarily bound to accept a defined order of value. This necessity is no doubt a relative one and quite distinct from that posited by intellectualist metaphysical realism, but it does bring out the fact that Pufendorf's voluntarism is rational in nature ((1672) 1934, i.iii.4, pp. 125-6/184; Denzer 1972, pp. 52-5).

The resolutely nominalist nature of his thinking, with its denial of a realm of essences, completes a decisive break with the Thomist metaphysical tradition still apparent in Grotius. Pufendorf's position does not only challenge the existence of good and evil in se, but also rejects the realist notion of human nature as an eternal and immutable reality and asserts, in opposition to traditional essentialism, the pure contingency of nature and the values imposed on it.

Pufendorf's voluntarist theory of moral entities brought in its wake a change in the concept of natural law. This came to be seen not in terms of the original nature of humankind in the Garden of Eden, nor an essential nature common to all living beings, but a matter of culture, of the world characteristic to humankind in its concrete history. He turned to the empiricism of the nominalist-voluntarist tradition and based his thought on the contingent nature of humankind as it appears with all those tendencies that are the fruit of the contingent decrees of divine providence ((1672) 1934, ii.iii.14, p. 141/205). Our reason can, by examining humankind's estate, demonstrate the need to live according to the norm of natural law, and make plain its precepts by solid and convincing demonstrations. Pufendorf applies the resolutive-compositive method in his search for the fundamental principle of natural law. This is achieved first by breaking down human nature into a bundle of elementary tendencies:


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self-love, ignorance, weakness, and the undeniable malice (pravitas) of the soul. 10 He then goes on to reconstitute the fundamental law of nature, the fundamentum legis naturalis, namely the law of 'sociability' (socialitas), which he conceives to be not a natural disposition to live together in society, such as Grotius' appetitus societatis, but a prime principle of social behaviour. 11

Man is an animal extremely desirous of his own preservation, in himself exposed to want, unable to exist without the help of his fellow-creatures, fitted in a remarkable way to contribute to the common good, and yet at all times malicious, petulant . . . For such an animal to live and enjoy the good things . . . it is necessary that he be sociable, that is, be willing to join himself with others like him, and conduct himself towards them in such a way that, far from having any cause to do him harm, they may feel there is reason to preserve and increase his good fortune. ((1672) 1934, i.iii.15, pp. 142/207-8)

The basis of natural law, then, is that each man should maintain towards all men a peaceful sociability, in conformity with the nature and end of the human race in its entirety. It follows that everything necessary for that sociability is prescribed by natural law, and everything contrary to it is forbidden by it ((1673) 1927, i.iii.9, pp. 21-2/19).

Yet despite his anti-metaphysical temperament, Pufendorf retained certain distinctions with regard to natural law that had been elaborated by scholastic philosophers. In the range of precepts derived from the principle of sociability, he distinguished those which were absolute and those which were hypothetical, taking up Suárez' differentiation between 'preceptive' and 'compelling' natural law. 12 This distinction, which Pufendorf admits drawing from Grotius, marks the essential difference between precepts of a tranhistorical nature, which bind all people in whatever state they find themselves and independently of institutions brought about by their will, and precepts which presuppose a state or other voluntary institution. The distinction echoes that between 'state of nature' and 'adventitious states' ((1672) 1934, ii.iii.24, p. 158/229; 1673 (1927), i.vi.1, p. 37). Alongside obligations arising from nothing other than the natural community, there are further ones which, although they impose themselves with all the force of natural law, nevertheless depend on free human choices. There are many things which man is free to do or not to do, but once they have been

11. Pufendorf (1672) 1934, i.iii.15, pp. 142-3/207-8; (1673) 1927, i.iii.7-9, pp. 21-2/19; cf. Welzel 1958, pp. 43-8; Krieger 1965, pp. 91-3; Denzer 1972, pp. 93-6.
done, they entail a certain moral necessity, an obligation arising from some precept of the natural law that governs their mode and their circumstances' ((1672) 1934, II.iii.24, p. 158/229).

In this way Pufendorf integrates history into the field of moral law. Hypothetical precepts, which are always as rigorously binding as absolute ones, are linked to the manifold variety of factual reality in historical time. The main institutions determining the nature of hypothetical precepts are word, property, and the fixing of prices, together with the power of one person over another, all of which correspond to the various adventitious states people construct by their will.13 By making the institutions necessitated by social life, from marriage to the state, into the foundation for specific obligations under natural law, a law people cannot escape. Pufendorf comes close to seeing the positive laws of political societies as having the same compelling force as natural law, even though he is careful not to confuse them. And in recognising that it is hypothetical natural laws that give positive laws their compelling authority in human courts, he takes the first step towards the hypostatising of positive law, which, during the Enlightenment, led to seeing obedience to the positive law of the state as an obligation arising from natural law ((1672) 1934, II.iii.24, p. 158/230). Pufendorf thus not only gave the political community a dominant role in the field of hypothetical natural law, but also became the first representative of 'a state version of the natural law' (Wolf 1963, p. 324).

iii The foundations of the state

The whole of Pufendorf's philosophy of society, law, and history is centred on the state, and consequently his political thought emerges primarily as a reflection on the foundations of political society (natural or contractual), its distinctive power (sovereignty), and its historical manifestations (forms of the state, political regimes, and the interests of states). Although the eclectic nature of his philosophical positions is apparent — Aristotelian sense for synthesis inherited through Suárez and Grotius from the scholastic school, Ockhamist voluntarism from Hobbes — there is another, more radical aim at the heart of Pufendorf's thinking, and that is to free it systematically from theology. For him, there can be no other basis for social theory than data and hypotheses produced by reason and observation. Pufendorf's

work of rationalisation and secularisation, which continued what Galileo, Harvey, and Descartes had already achieved and followed Hobbes and Spinoza into the social and political fields, is nowhere more evident than in his investigation of the foundations of the state ((1672) 1934, II.ii.2-3, pp. 11-16/22-4, (1660) 1931, pp. 4-6/xxix-xxx).

In this investigation Pufendorf has recourse, once the autonomy of the moral realm has been established, primarily to the methodology of the physical and mathematical sciences, understood in its resolutio-composite rather than in its demonstrative form. This emerges less from his treatises on natural law than from his occasional writings. It is worth making particular mention of his Dissertation on the Natural State of Man (1677), in the opening of which he states, in terms reminiscent of Hobbes' preface to De Cive, that:

Those who have devoted themselves to the study of physical bodies have not merely considered their outward appearance . . . but have attempted to penetrate them and break them down into their main component elements. Indeed they have . . . reduced everything corporeal to some prime matter, understood as being without any particular form and as something beyond which it is impossible to go. That same method has also been applied by all those wishing to examine the most important of moral bodies, the state. They have not been content with showing its external administration, the diversity of magistracies . . . Rather they have examined its inner structure . . . and they have . . . carefully distinguished the parts of which this huge body is made up. They have gone much further, seeing the final aim of their science as transcending all societies and as conceiving of the condition and state of men outside society and without all means and human institutions.

(1677, pp. 458-9)

The final stage of Pufendorf's resolutio procedure is an analysis of the state of nature from a point of view which excludes theology. The concept of the state of nature is the prima materia of his political thought, the starting point of the compositive procedure.

Pufendorf not only points out its elementary tendencies at an anthropological level (self-love, extreme weakness, a congenial need for others, malice), but is also concerned to show its specific characteristics at the social level; here, he differs from Hobbes and initially refuses to see the state of nature as a state of perpetual warfare and describes it rather as a state of relative sociability.14 In that state, men are ruled not only by their sense-impressions, but also by reason, which, Pufendorf believes, will, even in the natural state, readily reveal the fundamental maxims of natural law.


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If any man would adequately define a state of nature, he should by no means exclude the proper use of reason... Now since man can heed not merely the craving of his passions but also the call of a reason which does not measure itself simply by its own advantage, he is dissuaded from such a war as is described by the phrase 'of all men against all others'.

((1672) 1934, ii.ii.9, p. 118/172)

As well as anthropological and social considerations, there is also historical evidence to suggest that societies in the state of nature are not perpetually engaged in warfare, but rather have ties of amity ((1672) 1934, ii.ii.8, pp. 117/171-2).

Although Pufendorf sees the natural state as one of 'relative sociability' and even finds some advantages in it, such as freedom and equality, he is fully aware of its limitations. In language reminiscent of Hobbes and heralding Locke, he indicates its defects as insecurity, the lack of any recognised judge or power of constraint.

In the natural state each man is protected by his own powers only, in the community by those of all... In the natural state, if a man does not willingly perform for another what he ought under an agreement, or if he has injured him, or if some controversy arises otherwise, there is no one who by authority can compel the other to perform what he ought. ((1673) 1927, ii.ii.9-10, p. 102/91).

Thus, though Pufendorf rejects Hobbes' perpetual warfare, he still sees the natural state as the antithesis of the political state, and shows the defects which make urgent the establishment of political society ((1672) 1934, ii.ii.2, p. 108/137).

When considering the way political societies are set up, Pufendorf pays less attention to the historical than to the logical reasons for the formation of states. It is not so much human needs, our awareness of our insecurity and of the malice of others, as our natural propensity for political order which interest him. He turns to assess the degree of this propensity. He rejects Hobbes' position, which denies such a propensity, but nonetheless does not accept the Aristotelian notion of man as a political animal. In his view, the political state is radically different from the social state. Man is both sociable and disinclined to accept authority. Political society implies a radical change in the human condition, namely that man 'gives up his natural liberty and subjects himself to sovereignty, which embraces, among other things, the right over him of life and death', as well as the disposal of goods. Such a change cannot arise directly from nature. It can only be set up on the basis of an act of will following upon a rational consideration ((1672) 1934, vii.ii.4, pp. 650-2/953-6, ii.iii.14, p. 142/207).

This brings Pufendorf to the social contract. He adopts a viewpoint similar to that of Suárez. The Hobbesian formula of the contract of subjection absorbing the contract of association was unacceptable to him, and instead he maintained the necessity of a twofold consent of the will for the introduction of political society and the establishment of government. In fact, he went further than Suárez and converted the twofold contract into a three-phase theory. He sees the movement from the natural to the political state as involving, first, a contract of association (pactum associationis); secondly, a contract of subjection (pactum subjectionis); and, between, an intervening agreement (decretum) for the establishment of the supreme instrument of government. Each of these three stages, the pacta or the decreetum, explains one of the constituent elements of the political order ((1673) 1927, vii.ii.7, p. 120/107).

The first stage of the formation of the state thus lies in the contract of association. It is a voluntary agreement, 'every individual with every other one... it is necessary for each and all to give their consent... whoever does not do so... remains outside the future state' ((1672) 1934, vii.ii.7, p. 665/974). Pufendorf goes on to say that:

The wills of many men can be united in no other way, than if each subjects his will to the will of one man, or one council, so that henceforth, whatever such a one shall will concerning things necessary to the common security, must be accounted the will of all, collectively and singly... When a union of both wills and powers has been brought about, then at last a multitude of men is quickened into the strongest of bodies, a state.

((1672) 1934, vii.ii.5-6, p. 120/107)

If he makes clear that it is only on this basis that a state emerges, his purpose is also to insist that this first contract is not sufficient to establish it, having as its function the creation of a people from a multitude: it is the 'rudiments and beginnings of a state' ((1672) 1934, vii.ii.7, pp. 664-5/972-3).

The second stage is for the people to agree on the preliminary conditions of the contract of subjection, by passing a decree whereby the people agree a type of government, be it monarchical, aristocratic, or democratic, that is to direct the state, and to which they will commit themselves by the second contract. It is only when the form of government has been decided that the third stage is reached with the contract of subjection, which constitutes both the holder of power, monarch, council, or assembly, and the reciprocal commitments that a person or a body will enter into with those who have made the choice. 'The rulers bind themselves to the care of the common security and safety, and the rest to render them obedience' ((1672) 1934, vii.ii.8, p. 665/9755, cf. (1673) 1927, vi.ii.9, p. 121/107).

Pufendorf sees the movement from the state of nature to the political
state in a traditional way, and as grounded in agreement, but he
nevertheless stresses that it is the second contract which establishes the *civitas*
and makes it into a particular body, a *person* ((1672) 1934, vii.i.13, p. 671/983). His innovativeness lies here: he sees the will of the people as creating a new moral reality, the composite moral person of the state, the distinctive attribute of which is *sovereignty*.

Pufendorf here expresses a new concept of the personality of the state. Its novelty lies in its realism and autonomy (Denzer 1972, pp. 185–8; Gierke 1902, pp. 192–5). It is far removed from Hobbes, who is still vaguely tied to the idea of representation. The personality of the state, for Pufendorf, is not a legal fiction, but a specific and autonomous moral reality, a compound person, grounded in his theory of *entia moralia*. Such a real person has its own life and tasks, and specific attributes. The state has its own will and characteristic power, sovereignty.16 This realist concept of the state was not perhaps fully developed by Pufendorf, but it nevertheless played a threefold part in his general theory of the state. First, it allows him to distinguish between the patrimony of the state and that of the prince. Secondly, it ensures that the state will have an unchallenged status at the international level ((1672) 1934, vii.ii, pp. 879ff/1292ff). Thirdly, and in particular, it is the immediate reason for the need for a unified and centralised organisation of state power. In consequence, it calls for a doctrine of sovereignty so absolute that it represents a marked contrast to the assent-based view which inspired Pufendorf’s understanding of the formation of political society.

iv The doctrine of sovereignty

This is a modern and innovative aspect of Pufendorf’s political thought. It completes his theory of the personality of the state, determines his view of both absolutism and the right to resist, and shapes his typology of the forms of the state and of government. Like Bodin, Pufendorf sees sovereignty as ‘the soul of the state’ ((1672) 1934, vii.iii.1, p. 683/1000).

The problem of the origin of sovereignty is not as simple as it seems. It has its immediate origin in a human agreement which directly founds it. Certainly it is grounded in consent, ‘not upon violence but upon the free subjection and consent of the citizens’. And because of this the ‘supreme

sovereignty comes about as a moral quality’ ((1672) 1934, vii.iii.1, p. 683/1000). But this does not mean that the civil power is but a human invention arising from the random play of individual wills. In his care to avoid any charge of relativism or subjectivism that his emphasis on consent might seem to justify, Pufendorf carefully distinguishes between the order of human will and that imposed by the Creation. Taking up the scholastic distinction between *causa proxima* and *causa remota*, he stresses this point. ‘He who says that sovereignty results directly from pacts does by no means detract from the sanctity of supreme civil authority, or base the authority of a prince merely on human and not on divine right.’ Hence it is that sovereignty came from God as the author of natural law, for what ‘men have contrived under the guidance of sound reason’ they do ‘in order that they might fulfil the obligation enjoined upon them by God’ ((1672) 1934, vii.iii.1–2, pp. 683–4/1000–1). Pufendorf is here following the example of Suárez and attacking the doctrine of popular sovereignty, which reduces civil power to the status of a purely human institution, and that of divine right, which sees sovereignty as purely divine in origin, in which rulers are immediately invested with power by God. Against this, he argues that sovereignty proceeds at once *mediately* from God as the Creator and *immediately* from men as the founders of political societies (see Suárez (1612) 1971–81, iii.ii.2, p. 29).

We should not be deceived in this matter by his lengthy refutation of his contemporary J.F. Horn, the German theorist of the divine right of kings.17 Far from indicating any allegiance to the doctrine of popular sovereignty, this refutation enabled him to dissociate himself from any form of theological thought in his affirmation of the mediately divine origin of sovereignty. This emerges clearly from his observations on J.H. Boecler’s commentary on Grotius: the supreme power, Boecler says, lies ‘not alone in an act of men but also in the command of God and the law of nature, or in such an act of men as is made in an effort to conform to the law of nature’, so that, Pufendorf adds, ‘the command of God to establish states manifested itself through the dictate of reason’ ((1672) 1934, vii.iii.2, pp. 684/1000–1–2). By virtue of this doctrine of the natural divine right of the origin of sovereignty, Pufendorf can be seen largely in agreement with the view of Suárez, in which it proceeds from God as the author of nature, by means of our natural reason, but not without the intervention of the will of men (Suárez (1612), 1971–81, iii.ii.2, 5, 6, pp. 29, 31, 32).

16. Pufendorf (1672) 1934, i.i.13, 15, pp. 8/13, 10/15; vii.ii.13, p. 671/983; (1673) 1927, ii.vi.10, p. 121/108.

17. See especially Horn 1664.
Natural law and utility

By analogy with the human soul, Pufendorf saw sovereignty, the 'soul of the state', as having as many 'potential parts' as it produced different actions in the pursuit of its own ends. Sovereignty was the 'operative' and 'active' moral quality of the composite moral person which the state constitutes and it has certain proper characteristics. Of the 'parts' of sovereignty which correspond to what traditional doctrine called 'powers', Pufendorf lists over half-a-dozen. These parts relate to the power to make laws and inflict punishments, to settle differences between citizens, to make war and peace, to appoint magistrates and impose taxes, and to control education (1672 1934, vii.iv.2, p. 691/1011). His object in specifying these legislative, punitive, legal, confederative, and fiscal powers is by no means to suggest a separation of powers, but, on the contrary, their profound unity and the exclusion of any separation since 'each power must necessarily depend upon one and the same will' (1672 1934, vii.iv.11, p. 695/1017).

The characteristics of sovereignty are indivisibility, absoluteness, and sacrosanctity. The nature of the state postulates indivisibility: to tear asunder the parts of sovereignty is to destroy the state (1672 1934, vii.iv.11, pp. 695–6/1017). Since sovereignty is indivisible, it is, like the freedom of individuals in the natural state, absolute and unlimited. In the natural state there exists 'the highest and absolute liberty of individual men' to act 'in accordance with their own wish and judgement'; so also the state has the same liberty, or faculty to decide by its own judgement about the means that look to the welfare of the state. And this liberty is attended with absolute sovereignty, or the right to prescribe such means for citizens, and to enforce them to obedience. Therefore, there exists in every state in the strict sense of the word, an absolute sovereignty, at least in habit and theory, if not always in practice.

(1672 1934, vii.vi.7, pp. 728/1063–4)

The indivisible nature of sovereignty also implies 'Caesaropapism', full power in religious matters. It cannot be allowed that a putative religious duty interrupts the command of the sovereign.

For if a man commands citizens to do something upon penalty of natural death and another persuades them that by such a deed they will incur the penalty of eternal death, and each of them does this by his own right . . . it follows that not only can citizens, though innocent, be rightfully punished, but that the commonwealth will be dissolved into an irregular status with two heads.

(1672 1934, vii.iv.11, p. 696/1017)

Pufendorf

There can be no sharing of spiritual power, and here Pufendorf follows the Lutheran doctrine of jus circa sacra, the denial of any external or internal limitation of state power by means of the indirect power of the church as provided by Suárez' theory of the potestas directiva ((1672) 1934, vii.iv.11, pp. 695–6/1077; cf. Suárez (1612) 1971–81, vii.1, pp. 97–99).

The outcome of the indivisibility, absoluteness and sacrosanctity of sovereignty is the obligation to obey. 'And surely no sane man will at all doubt that it is wrong to resist rulers so long as they stay within the limits of their power. For it is patent from the end and genius of sovereignty that there should necessarily be joined to it the obligation of non-resistance' (1672 1934, vii.viii.2, p. 755/1103). In approaching the problem of obeying unjust laws, Pufendorf sees the subordination of the state to natural laws as secondary to the primacy of the established order. His analysis of the sacrosanctity of sovereignty culminates when he states that 'there is always a presumption of justice on the part of the prince' and that 'anyone who finds the burdens intolerable can go elsewhere' (alio migrando potestas est) (1672 1934, vii.viii.3, 6, pp. 756, 760/1104, 1110).

Such ideas of the sanctity of sovereignty seem to go totally against his theory of the state. After taking the state of nature as his starting point, and maintaining both that there are natural laws and that consent is the foundation of all power, he later shows himself to be a defender of established power, even an advocate of absolutism. But this is not incoherence, but the result of a deliberate intention to establish state sovereignty peremptorily and incontestably by refusing to set it any external or internal limits (cf. Derathé 1970, pp. 212, 324). If sovereignty is implied to be limited by natural law, in fact it is the sovereign who is deemed 'the best judge of the common good'; his laws have the obligatory force of natural laws, by the doctrine of hypothetical natural law and by the contract of subjection. Neither may the church provide external limits nor the people internal limits to sovereignty (1672 1934, vii.viii.1, p. 158/230, vii.viii.1, p. 755/1103).

In the same way, contrary to what might be expected of the consensual foundations of political society, Pufendorf is very far from being an apologist for the right to resist. Any right of private persons to resist unjust laws and commands is absorbed in the unconditional duty of patience. The procedure he adopts here is influenced by scholastic casuistry,

and ranges from stressing that grievances against the government should be kept to a minimum – whether they come from the common people ignorant of the real needs of the state, or from the magnates, embittered by their exclusion from power – to making much of the subject’s obligation to obey ((1672) 1934, vii.viii.3, 6, pp. 756, 760/1104–11). He insists on the duty of the private citizen to overlook the shortcomings of rulers.

Since such is the condition of human life that it cannot do without some inconveniences . . . it would be foolish as well as imprudent to wish to rise in revolt against a prince for merely any kind of grievance, especially as we ourselves are not always so exact in meeting our full duty toward him, and since the laws commonly overlook the lesser shortcomings of private citizens. How much more fair would it be, therefore, to overlook the slight shortcomings of a prince . . . And added weight is given this consideration by the fact that experience is witness to the great slaughter of citizens and mighty shock to the state with which the overthrow even of the worst princes has been attended . . . This also is certain: that even when a prince with hostile intent threatens a most frightful injury, to leave the country, or protect oneself by flight, or seek protection in another state is better than to take up arms.

(Pufendorf 1934, vii.viii.5, pp. 738/1106-7)

Pufendorf goes on to consider the extreme case of a prince who threatens death to a manifestly innocent citizen. In such a case, in assuming by this act the role of an enemy instead of a prince, he is understood to have released the citizen also from obligation . . . Yet in such a case there should be resort to flight, so far as possible, and the protection sought of some third person who lies under no obligation to that prince. So that even such an extreme situation does not imply a right of resistance, for if flight be not possible, a man should be killed rather than kill, not so much on account of the person of the prince, as for the sake of the whole commonwealth, which is usually threatened with grave tumults under such circumstances’ ((1672) 1934, vii.viii.5, p. 759/1108).

Nonetheless, in a case of tyranny against a whole people, Pufendorf is forced to concede a right of legitimate self-defence when brought to the last extremity by ‘the unjust violence of its prince’. Such defence, ‘when successful’, brings liberty, for a prince, in becoming an enemy, himself frees a subject from obligation to him. Pufendorf was later to confirm this doctrine in the light of his ex post judgement that the Glorious Revolution in England was legitimate. Yet even so, the scope of self-defence is restricted, both by the opportunism implicit in the notion of ‘defence, when successful’, and by the further apologia for absolutism he builds upon the same original concept of contract. For, he argues, it is by no means necessarily improper for a people to consent to slavery, ‘for this civil servitude . . . is not so foreign to nature as some fancy, so that, when a man has at one time felt it necessary to agree to it, so as to avoid a greater evil, he can later cast it off, when the opportunity arises, on the plea that nature gives him the right’. He may not repudiate a bargain just because he may ‘realise later that the bargain was not to his advantage’ ((1672) 1934, vii.viii.6, pp. 760/1110–11).

The parameters of Pufendorf’s concept of the right to resist are, therefore, set less by his theory of the social contract and by his concept of sovereignty, than by the absolute nature of sovereignty and the opportunistic character of his understanding of reason of state (see Denzer 1972, p. 199). Furthermore, his concept of the right to resist gives an exemplary illustration of the extent to which his contractualist theory of state formation gave way to his absolutist doctrine of sovereignty. Pufendorf was here attempting to provide a new basis for the state and a better intellectual foundation for sovereignty than those based on the concept of divine right, in order to free political thought from theological domination. He comes close to offering a new, radical, and secular basis for the legitimisation of absolutism. ‘Pufendorf’s natural foundation of state power’, as J. Sauter judiciously notes, ‘is no more than an accommodation with the absolutism of his time, which sought to replace every form of transcendental justification by a “natural” one. Politically it could be as advantageous, or even more so, than a theocratic justification’ (Sauter 1932, p. 136n).

v The state in history

Nothing could be more fallacious than to see Pufendorf’s political thought merely as a theory of the state produced by a natural law rationalist speculating totally outside the realms of historical reality, or to contrast in his work an abstract natural law theory of the state and an historian’s pragmatic thought on the interests of states (see Meinecke 1924, p. 287). His thought only conceives of the state as anchored in history, whether his aim be to investigate its typical forms or its political regime or to formulate the principles governing its changes in time. His categories, distinctions, and theses concerning the typology of states are by no means abstract, but sharpened and tested by the observation and experience of an historian – a court historian at that – who had become familiar with the vicissitudes of the principal states of the civilised world.

Filled with a lofty idea of state power, which could neither be diminished
not divided, and anxious to describe the complexity of historical reality, of which the Holy Roman Empire of his age provided a striking example, Pufendorf, following Francisco de Vitoria and Bodin, sought to give new life to the classical theory of the forms of the state, which was Aristotelian in origin. In this regard, he made a distinction between forms of state and forms of government on the one hand, and on the other he gave up the criterion of rectitude in favour of that of the unity of sovereignty; he also rejected any idea of a mixed form. Thus he replaced the Aristotelian typology of pure forms (monarchy, aristocracy, and republic) and degenerate forms (tyranny, oligarchy, and democracy) with a new one based on regular and irregular forms of state, in terms of the way in which sovereignty is divided or left whole within each state. Where not everything in the state ‘appears to proceed from one soul and will, nor is each and every person to be controlled by virtue of sovereignty’, then the state is irregular ((1672) 1934, vii.v.2, 14, pp. 701, 712/1024, 1040, 1677, §6, p. 311). The criterion of regularity, grounded in unity of power, lies at the heart of his typology.

Pufendorf also differentiates between ‘simple’ or ‘unitary’ and ‘composite’ states, and ‘unions of states’. Composite states had interested him since his 1664 thesis on Philip of Macedon. Pufendorf was amongst the first to study comparative constitutional law and one of the earliest publicists to take an interest in the phenomenon of federation. He subdivided composite states into personal unions (where more than one state has the same monarch) and confederations of states (where two or more states are constituted into a single body by treaty). But his judgement of such unions is determined always by the criterion of regularity, for as soon as a confederated state is able to impose its will on another, the sovereignty of the latter is diminished and the union becomes irregular, or even turns into a unitary state.21

Despite his insistence on the indivisibility of sovereignty, Pufendorf retains the classical distinction of three forms of government – monarchy, aristocracy, and democracy – for sovereignty may reside in ‘one simple person, or one council, composed of a few, or all the citizens’ ((1672) 1934, vii.v.3, pp. 701/1024–5). He does, however, put aside the Aristotelian typology of degenerate forms, for ‘although there is the greatest difference

between a healthy and a sickly state’, nonetheless ‘vices change neither the nature of power itself nor its proper object’ ((1672) 1934, vii.v.11–14, pp. 708–12/1035–40). Similarly, the idea of ‘mixed’ forms must be dispensed with, for any apparently mixed state is best called irregular. Pufendorf appears here to follow Bodin closely. Sovereignty may lie in a body of persons as well as in an individual prince, but that is no sanction for talk of mixed regimes. Bodin drew a distinction between sovereignty and the manner of its administration, and Pufendorf follows suit. Hence, a sovereign monarch may choose to refer difficult matters to a senate or to the people, or a sovereign people permit the administration of affairs to lie in the hands of a principal magistrate. Such a regime is either, exceptionally, one in which sovereignty remains essentially undivided, or, more likely, is an irregular state ((1672) 1934, vii.v.13, pp. 711–2/1039–40).

The idea of the mixed state had, in Polybius, been the kernel of an idea of the best state. But Pufendorf rejects that too. There can be no absolute ‘best regime’, only that which has fewest evils, for all states are subject to inconveniences ‘by reason of the slothfulness or the wickedness of the rulers’ ((1672) 1934, vii.v.22, p. 721/1052). It is this relativist attitude that plays the major part in how he determines the suitability of different political regimes to the individual situation of each state, leading him to see monarchy as inadequate for a city-state and democracy as inappropriate for the government of an extensive empire or for people amongst whom there is a large number of proud and ambitious men.22 The same attitude also induces him to prefer monarchy over democracy and aristocracy, because ‘a monarch . . . is ever endowed with power sufficient to exercise acts of sovereignty’: a popular or senatorial regime requires appointed times and places for assembling and deliberating ((1672) 1934, vii.v.9, p. 707/1033). Even so, there is an open-mindedness in Pufendorf that also allows him to insist that democracy is a regime of great antiquity and that it is a regular regime. He expresses this in terms which take us forward to Rousseau’s distinction between the ‘general will’ and the ‘will of all’. Majesty may ‘as much belong to a moral compound person as to one man’ ((1672) 1934, vii.v.4–10, pp. 701–8/1023–34).

Even a man of little wit can comprehend the difference between all the people and individuals, between a council of the people, and the members as they scatter to their homes . . . the whole is an actual moral person distinct from the individual members, to which a special will, as well as actions and rights, can be attributed, which do not fall to the individuals. ((1672) 1934, vii.v.5, pp. 703/1027–8).

20. See Pufendorf (1672), §6, p. 310; see also the quite clear definitions in 1677d, §2, p. 311, and (1672) 1934, vii.v.16, p. 744/1043.


Natural law and utility

The same open-mindedness extends to the incorporation of the principle of limited monarchy into his theory. In some states kings are limited to a certain manner of procedure. The judgment of a single person may be easily misled in seeking out what is for the welfare of the state, and so it has appeared advisable to many peoples not to commit in so absolute a fashion such power as this to a single man... but to prescribe for him a definite manner of holding the sovereignty. This is especially appropriate where certain institutions and a particular manner of conducting affairs are best suited to the genius of a people. For instance, a people could lay down a law for the king, when they crowned him, that he would not on his own authority may change any matter in matters of the religion of the land! ((1672) 1934, vii. vii. 7, 9, 11, pp. 727–30, 734/1063–6, 1072). In conclusion, we can see that Pufendorf’s thinking in this area, though relativistic in temper, does not verge on indifferently, but is grounded in an acute sense of historical peculiarities and a consequent eye for the regime best suited to each state in its own circumstances.

Pufendorf had decisively broken with the ‘pathological’ typology of regimes characteristic of traditional political thinking, to which the theory of the best regime was a kind of therapeutic adjunct. He transforms this classical theory into a view of changes within states centred on historical modifications of the form and destiny of states rather than abstract typologies of regime. He is also once again governed by his fundamental distinction between regular and irregular states. He instances states which combine to form a new single state, either by mutual consent or military pressure, and states which disband by virtue of their inhabitants scattering. Like a methodical entomologist, Pufendorf lists the characteristic ways in which the moral tie which binds the ‘community of right’ may be broken. He draws many of his instances from the historians of antiquity, Livy, Tacitus, and Plutarch, and from the modern writers, George Buchanan, Grotius and Hobbes ((1672) 1934, vii. xii. 1, 5–9, pp. 924, 926–8/1360, 1362–7). Similarly, Pufendorf examines the manifold ways in which irregular states may come about or become transformed. There are states in which, at the outset, the people ‘bargained for such jurisdictions and privileges for themselves, that they cannot be regarded as true subjects’. Institutions which begin in ‘usurpation, faction, or contumacy’ may come to ‘pass thereafter as right or privilege’, though it be of irregular form ((1672) 1934, vii. v. 14, pp. 712/1014–15). Not the least example of an ‘irregular’ state hallowed by time is the Holy Roman Empire, in which Pufendorf had a close interest, as an ‘enlightened patriot’ of the empire (see Wolf 1963, p. 333).

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Indeed, although he devoted an entire thesis to the example of ancient Rome (On the Form of the Roman Republic, 1677) dealing with the metamorphoses of the monarchy and the singular republic that succeeded it, and although he dwells on Rome up to the time of the division of the empire (divisio imperii), it is nonetheless the Holy Roman Empire which Pufendorf finds most instructive (1677, pp. 357ff; (1672) 1934, vii. v. 15, pp. 712–14/1041–3). Under the pseudonym of Severinus de Monzambano he devoted to it one of his most brilliant works, On the Constitution of the German Empire (1667). This study afforded him the opportunity of finally exposing the medieval ideology of the translatio imperii, which fraudulently formed the basis for seeing the Holy Roman Empire as the continuation of that of Ancient Rome, an interpretation which in Pufendorf’s view could be of no service to anyone except the papacy. It also allowed him to attack the Reichspublikist of his own age, which was attempting to incorporate the empire into one of the customary categories of the traditional theory of states. Some writers, such as Bogislav Philipp von Chemnitz, saw it as an aristocratic state, others, like Henning Arnisaeus and Dietrich Reinking, as a monarchical state. The fact is that the empire of his time belonged to none of the forms of states proposed by traditional thought, and, furthermore, its history provides an exemplary illustration of the process of degeneration at the origin of irregular states.

There remains therefore nothing for us but to describe the German Empire, if we wish to classify it according to the rules of political science, as an irregular body resembling a monster which, over the centuries, as a result of the negligence of the emperors, the ambition of its princes and the plotting of its ecclesiastics, has constituted itself from a regular form of monarchy and an irregular form of state, which is no longer a limited monarchy, whatever appearance of such it may have, but nor is it a federation of several states, since it represents something between the two.

(1667, vi. 9, p. 157).

Pufendorf does not, however, merely adopt the impartial stance of the student or historian of comparative institutions. He offers a diagnosis, even a prognosis, of this classic case of constitutional irregularity.

That situation is the lasting cause of a mortal sickness for the empire and of all its internal troubles, for on the one hand the emperor strives to refound his monarchical power and on the other the states of the empire tend towards total liberty... It will not be possible to bring Germany back to its original form without the greatest upheavals and total confusion, and, indeed, that country is of

23 Chemnitz (alias Hippolitius a Lapide) 1640; on him see Hoke 1977. Arniseus 1610; on him see Dietzel 1970. Reinking 1619; for him see Link 1977.
its own accord becoming once more like a federation of states. And if we remove the mutual resistance of emperor and the states of the empire, it is already a kind of confederation of unequal allies.

(1667, vi.9, pp. 157–8).

Pufendorf goes on to make recommendations to prevent the condition of the empire from deteriorating further. Proper forms of state should be established and their specific interests defined. This is what emerges in the final chapter of his German Empire, with the significant Latin title of De Status Imperii Germanici, where he takes the opposite positions to those recommended by von Chemnitz (1667, vi.2, 4, pp. 186, 191–5). A chief aim of politicians must be to give more attention to preserving what is possessed than to achieving new conquests. If the confederation should appoint a leader, ‘the greatest precautions must be taken lest he aspire to sovereignty’. That leader must be limited by precise laws and ‘also by the addition of some permanent council that represents the confederate states’. In short, the German states must understand themselves as regular states, confederated together. In this discussion, Pufendorf has gone beyond the role of a student of comparative state systems, to that of theorist of the interests of states, as befits a counsellor and court historian (1667, viii.4, pp. 192–5).

Pufendorf’s new doctrine of reason of state, which finds fullest expression in his historiographical work, flagrantly disproves any suggestion that natural law philosophy was not open to historical reality. His doctrine was the first important modification of the Italian theory of reason of state, as adapted in the France of Richelieu. In the latter, the general theory of political art came to be applied chiefly to the individual interests of states in their relationships with each other. It was this French modification of the theory, with its implied preeminence of foreign over domestic policy, that Pufendorf was so decisively to transplant to Germany. This he did less in his works on public and natural law than in his historical works, particularly in his Introduction to the History of the Principal Kingdoms and States of Europe.24

Pufendorf distinguishes several categories of interests, of which the two major ones are the ‘imaginary’ and the ‘real’ interest of states. The former is of a sort that can only be sustained by a universal injury to, and contention with, other states, such as an aspiration to ‘the monarchy of Europe’, or a universal monopoly; such things being the fuel with which the whole

world may be put into a flame’. The real interests of states may be further divided into ‘perpetual and temporary’. The former depends chiefly on the situation and constitution of the country, and the natural inclinations of the people; the latter, on the condition, strength, and weakness of the neighbouring nations (1682, pp. 3–43).

He goes on to apply these theoretical distinctions to particular cases, such as those of England, Holland, and the Swiss Cantons. Thus, for instance, he observes the interests of England in relation to constitutional history, national character, and the situation of the country:

England ought to take special care, that it does not fall into civil dissensions, since it has often felt the effects of the same, and the seeds of them are remaining yet in the nation; which chiefly arises from the difference in religion, and the headstrong temper of this nation, which makes it very fond of novelties. Nevertheless a wise and courageous king may easily prevent this evil, if he does not act against the general inclination of the people, maintains a good correspondence with the Parliament; and as soon as any commotions happen, takes off immediately the ringleaders. Lastly, England and Scotland being now comprehended in one island, whose chief strength lies in a good fleet, it is evident, that this king need not make any great account of such states as either are remote from the sea, or else are not very powerful in shipping. Wherefore the king of England takes no great notice of Germany . . . It is the chief interest of England, to keep up the balance between France and Spain, and to take a special care, that the king of France does not become master of all the Netherlands . . . Holland seems to be the only obstacle that the English cannot be sole masters of the sea and trade.

(1682, iiv.37, pp. 314–15/146–7)

The doctrine of the interests of states is not simply representative of Pufendorf’s subtle political judgement, but established norms that are assigned to the sovereign in the government of states. For the doctrine completes the theory of hypothetical natural law by giving sovereigns a privileged role in determining and putting into effect the rules of natural law. Once the pursuit of the public good is accepted as the first of these rules (suius populi suprema lex esto) and one which every ruler exercising sovereignty must obey, the reason of state specified in his teaching on the interests of states is that which will give content to the right reason of princes ((1672) 1934, viii.3, p. 766/1118; cf. Reibstein 1956, p. 65).

Pufendorf’s doctrine is more than a mere transposition of natural law to the field of relationships between states. He is categorically on the side of those who see natural law and the law of nations (jurisdiction) as one and the same thing ((1672) 1934, ii.iii.23, p. 156/226). He sees the moral persons constituted by states as partaking in the same rights as physical persons in

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the state of nature (1672) 1934, viii.xii.4, p.926/1362). Just as with individuals, the principle of sociability is compromised by the right to act in our interest, where there is no common sovereign arbiter. For instance, he holds that in entering into treaties with other states a prince always makes this implicit exception: 'Provided considerations of his own kingdom can conveniently allow it.' For, 'since a king is bound to no one more closely than to his citizens, no promise of his to a foreigner can be valid if it is clearly to the disadvantage of the latter.' Pufendorf then cites Lord Bacon: 'For princes there is but one true and fitting basis of faith, necessity' (1672) 1934, viii.ix.5, pp.908-9/1334-5). No state is irrevocably bound by international agreements if they conflict with its own interests. Pufendorf's overriding proposition at the international law level—and here he echoes Spinoza—seems not that of sociability, but that of reason of state. This latter legitimises both absolutism and the fact of international anarchy.26

Throughout Europe, Pufendorf's political thought soon exerted exceptional influence. There are many reasons for this: the course of his life, which combined the freedom of the republic of letters with the privileges of a courtier; the eclectic nature of his inspiration, which was nourished on the realist and organicist tradition of high scholasticism and the nominalist and individualist currents of the later stages of that movement; and the diversity of ways in which he achieved literary expression, from the polemical essay to the more academic genres of his philosophical and historical treatises.

This conjunction of features explains why his chief writings as a publicist, philosopher, and historian, On the Constitution of the German Empire, On the Law of Nature and Nations, and the Introduction to the History of the Principal Kingdoms, went through ten to twenty editions, and the short work On the Duty of Man and the Citizen over sixty editions, in the century after their publication, being translated into all the important European languages, Danish and Russian included (Denzel 1972, pp.339-73). It also explains why a number of these editions and translations, with substantial commentaries, served as text-books for the study of natural law, politics, and public law in most of the universities of Protestant Europe, from Scotland to Switzerland; they became obligatory

reading for the higher education of the young. Pufendorf was to be recommended by Diderot in his plans for a Russian university, by Locke and Rousseau for the education of young noblemen, and was echoed in the training of Frederick the Great and Joseph II.26

Pufendorf's many theses left their mark on the political language of the eighteenth century: concerning the state of nature, the three-phase social contract, the establishment of state power upon the basis of (irrevocable) consent, his absolutist view of sovereignty, his typology of states. He was popularised by a galaxy of commentators in the chairs of law and philosophy in the German-speaking universities (Denzel 1972, pp.318-19; Dufour 1972, pp.206-11). Pufendorf bestrides the rise of the German school of modern natural law, a fact encapsulated by Schiller at the close of the eighteenth century:

Leave then the wild wolves' fiercer station,
Accept the state's more lasting obligation.
Thus teaches, pen in hand, his nostrum,
Pufendorf, from his high rostrum.
(Schiller 1964, ii, p.131)

His political theses were spread in the translations and commentaries of the French Huguenot Barbevray (1674-1744) and the compilations of the Genevan Burlamaqui (1694-1748).27 They shaped key ideas of Rousseau and Diderot (in his Encyclopédie articles), as well as, in Anglo-Saxon writing, Locke's concept of the natural state and William Blackstone's remarks on the foundations of state power (Derathé 1970, pp.78-84; Dufour 1985). In America they shaped the manifesto of John Wise (1652-1725) on the democratisation of the New England churches, the defence of the rights of colonies propounded by James Otis (1725-83), as well as the ideas of the American Founding Fathers, Samuel and John Adams, Thomas Jefferson and Alexander Hamilton.28

26. For Europe in general see Othmer 1970, pp.133-49; Dufour 1985; for French Switzerland see Dufour 1976, pp. xi-xv, i-5. For France see Rousseau 1824, p.10; Diderot 1875, p.492. For England see Locke 1963 (Thoughts Concerning Education). For Pufendorf's influence on Frederick the Great see Baumgart 1979, pp.159-194, and on Emperor Joseph II see Voltaire 1913, pp.71-2.
27. On Barbevray's life and work, before and after the Berlin years, see Meylan 1937, for his philosophy of law see Dufour 1976, pp.11-25. On Burlamaqui see Gagebin 1944 and Harvey 1937.
Natural law and utility

His manner of grounding state power on contract served ‘enlightened despots’ and angered revolutionaries. When Frederick the Great acceded to the throne, a medal was struck with the inscription ‘Friederichus rex natura’ (Baumgart 1979, p. 143). At the end of the construction on the general code for the Prussian states drawn up in 1787 (Baumgart 1979, p. 143) its main author, Carl Gottlieb Svariez (1746–96), remarked: ‘From now on, the social contract will be more than an attractive hypothesis’ (Svariez 1787; Conrad 1961). In 1793, in the midst of revolutionary upheavals, A.L. Schlözer offered disenchanted reflections: ‘The people may resist, compel, depose, punish and do all these things within the idea of a contract... The people has these rights, the old public lawyers tell us, but does not have the right to exercise them’ (Schlözer 1793, p. 105).

In the twentieth century Pufendorf’s reputation has been ambiguous. Few doubt that his breadth of vision, the rigour and novelty of his legal and historical methods, and the radical nature of his political criticism, all make him an outstanding figure. But judgements remain opposed. For some, he was above all a defender of absolutism and the established order. For others, he was more a pioneer, a publicist for the urban bourgeoisie, or a theorist of modern conceptions of human rights and fundamental freedoms. Yet it would be risky to take the latter view. By building upon a social contract, Pufendorf may seem to preclude our fundamental freedoms, but, as we have seen, he tends rather to set the ultimate seal on state power. The hypothesis of the state of nature serves less to remind rulers of the original rights of subjects than to induce the latter to greater submission to the former. ‘I myself’, Pufendorf remarked, ‘believe that the complaint of the masses about the burdens and drawbacks of civil states could be met in no better way than by picturing to their eyes the drawbacks of the state of nature’ (Gifford 1934, II, ii.2, p. 108/157). In the Old World his authority served to establish state power independently of any theological limitations. If, in the New World, and occasionally, in revolutionary upheavals, in the Old, his authority was to be cited in defence of peoples’ natural rights, it was because in their circumstances the natural state was no longer a rhetorical figure but, uniquely, it was a reality (Vossler 1930). In such circumstances, Pufendorf’s political thought came to have an impetus far different from that of its original conception.

The reception of Hobbes

MARK GOLDIE

1 The polemic against Hobbes: the theological premises

The German philosopher Leibniz, the most persistent and perceptive of Hobbes’ continental critics, believed that the crux of the quarrel between them lay in Plato’s Euthyphro Dilemma. Socrates wanted to know of Euthyphro whether a thing was ‘just’ (or ‘good’ or ‘true’) by virtue of God having willed it, or whether God willed it because it was of itself just. If the former, then justice is arbitrary, having no essential nature; it subsists contingently, by divine fiat, and can be humanly known only as empirical knowledge of the facts of God’s utterances. This is called the voluntarist, or nominalist, doctrine. But if the latter answer is correct (and Socrates thought it was), then justice does have an essence distinct from its being willed, and it can be intuited by rational agents. This answer is known as the essentialist, or realist, doctrine. In the biblical terms of seventeenth-century debate this dilemma was expressed as the choice between the awesome, peremptory God of Abraham and Isaac, or of Job, and the philosophical, rational God of the Johanneine Logos. Because God told Abraham to kill Isaac it seemed that killing one’s son was not an immutable evil, but only evil until God said otherwise: justice is contingent upon God’s command. Yet if, on the other hand, God is the supreme light of reason, then He will act only in accordance with self-consistent rules embodied in the natural order. Whilst the former view guarantees God’s omnipotent will, it does so at the cost of His reasonableness. The latter view, conversely, establishes divine wisdom, but at the risk of turning God into a metaphor for Reason and Nature. This is the cardinal dilemma in the theology of God’s